TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~585.~~ ~~578~~ 130

THE ATLANTIC DE LAINE COMPANY ET AL., APPELLANTS,

vs.

LUCINDA JAMES, ADMINISTRATRIX OF CHARLES T. JAMES, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

FILED OCTOBER 12, 1874.

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1 *The bill in equity.*

CHARLES T. JAMES
vs.
THE ATLANTIC DE LAINE COMPANY ET AL.

T. A. Jenckes, esq., for complainant; R. W. Greene, esq., A. Payne, esq., Jas. H. Parsons, esq., for respondents.

2

3 In equity.

Be it remembered that, on the first day of March, A. D. 1859, the following bill in equity was filed in the clerk's office of the circuit court of the United States within and for the Rhode Island district.

RHODE ISLAND DISTRICT, *sc:*

To the judges of the circuit court of the United States for the district of Rhode Island:

CHARLES T. JAMES
vs.
THE ATLANTIC DE LAINE CO. ET AL. } In equity.

Charles T. James, of the city, county, and State of New York, a citizen of the said State of New York, brings this, his bill of complaint, against the Atlantic De Laine Company, a corporation created by the legislature of the State of Rhode Island, and located and transacting business in the county of Providence, in said State, a citizen of said State of Rhode Island, and against George W. Chapin, of the city and county of Providence, in said State, a citizen of said State of Rhode Island, and against Lyman B. Frieze, of the city and county of Providence, in said State, a citizen of said State of Rhode Island.

4 And thereupon your orator complains and says that, heretofore, to wit, at Providence aforesaid, on the second day of September, A. D. 1851, your orator made and executed to Lyman B. Frieze, of said Providence, a deed of assignment of all his property for the benefit of his creditors, a copy of which deed of assignment is hereto annexed, marked "A," and made part of this bill. That said deed of assignment conveyed a large amount of real and personal estate, situate in the State of Rhode Island and other States, which had cost your orator about the sum of eight hundred thousand dollars, and that all of said estate was immediately taken possession of by said assignee, and held by him under the trusts in said deed and subject to the liens thereon. That a portion of said assigned property consisted of the interest of your orator in the Atlantic De Laine Mills, the property of said defendant corporation, one-half of which was then the property of your orator, and for which he was entitled to certificates for one hundred and fifty shares of said stock of the par value of one hundred and fifty thousand dollars.

And your orator further avers that, previous to the date of said assignment, to wit, on the first day of January, A. D. 1851, he entered into a contract with Hill, Carpenter & Co. and George W. Chapin, as attorney for others, whereby your orator agreed to erect certain buildings therein described, and to furnish the same with machinery suitable for carrying

on the business of said Atlantic De Laine Company, as expressed in said contract, your orator agreeing to erect, furnish, and put up said buildings and machinery for the sum of two hundred and sixty thousand dollars, and a copy of said contract is hereto annexed and made part of this bill, marked "B."

And your orator further avers that at and before the date of said contract the said parties thereto entered into an agreement among themselves to procure an act of incorporation by which they should become incorporated under the style of the Atlantic De Laine Company, with a capital of three hundred thousand dollars, to be divided into shares of one thousand dollars each; and that your orator subscribed for one hundred and fifty of said shares, and the said Hill, Carpenter & Co. for thirty of said shares, and the said George W. Chapin, as attorney for the firms of Hoyt, Tillinghast & Co., of New York; the Globe
5 Printing Company, of Rhode Island; Dodge, Tucker & Co., of Boston, Massachusetts; Hacker, Lea & Co., of Philadelphia, Pennsylvania; Day, Owen & Co., of Hartford, Connecticut; and Harrison & Co., of Baltimore, Maryland, for one hundred and seven of said shares of said capital stock, leaving thirteen shares not subscribed for.

And your orator further states, that immediately after the execution of said building contract, he entered upon the lands purchased by said company, constructed the buildings described in said contract, and contracted for the machinery required in said mills, and actually paid in upon his subscription to the stock of said corporation the sum of one hundred and thirteen thousand dollars or thereabouts, previous to the date of his said assignment; and that he had become liable to pay in addition, for labor, machinery, and materials in the performance of said contract, the sum of about one hundred and eighty-seven thousand dollars, making in all the sum of about three hundred thousand dollars which he had paid or become liable to pay to and for said company and its members, in the execution of said contract, previous to the date of his said assignment.

And your orator further states that the persons hereinbefore named made application to the general assembly of the State of Rhode Island for a charter as a manufacturing corporation, which act of incorporation was passed at the May session of said general assembly, A. D. 1851, and they immediately organized themselves according to the provisions thereof. And your orator further states, from knowledge which he then acquired, and upon information and belief, that the remainder of said subscribers to the capital stock of said company had not paid in any portion of their said subscriptions previous to the date of his said assignment.

And your orator further states that one of the provisions of his said assignment was that the assignee should proceed and complete the contract, which your orator had entered into with said Atlantic De Laine Company in accordance with the terms thereof, and should appropriate so much of the assigned property as might be necessary to complete what remained to be done or completed of said contract, and to charge the whole of said assigned estate in his hands as assignee with the obligations to complete the same. And in the execution of said trusts the assignee proceeded to complete the said contract and
6 appropriated the greater portion of the proceeds of said assigned estate for that purpose. And your orator further states that the actual amount expended by him and his assignee in the performance of the contract for the erection and completion of said mills and machinery was about the sum of three hundred and forty thousand dollars. And

your orator further states that said mill was completed and a portion thereof put in operation in the latter part of the year 1851, and the whole of the same was completed before the month of June, 1852; that the said mill was completed in a superior manner and immediately went into full and successful operation.

And your orator further states that previous to the execution of his said assignment, to wit, on the day of July A. D. 1851, finding himself embarrassed for the want of present means to carry on the work under said contract, he procured by way of loan from the parties interested with him in said Atlantic De Laine Company the sum of seventy-five thousand dollars, to secure the payment of which he executed a mortgage upon his interest in the property of said Atlantic De Laine Company, and upon other property belonging to him, which mortgage was made and delivered to said George W. Chapin, as trustee for the parties who advanced the money to this complainant. And your orator further states that said mortgage was made by him, and the provisions in his said assignment, requiring his assignee to complete the contract with said Atlantic De Laine Company, were inserted upon the clear, distinct, and positive understanding that the said mortgage should not be enforced or foreclosed against his interest in the property of said Atlantic De Laine Company, to the injury of himself and his estate, and with the assurance on the part of said Chapin, as trustee for the parties who advanced said money, and as treasurer of said corporation, that said stock should be retained and held by your orator and his said assignee until the same could be disposed of to its full value.

And your orator further states that as soon as said mills had been completed and said machinery furnished according to said contract, the said corporation, through the said George W. Chapin as their treasurer, made claims upon your orator and his assignee, the said defendant, Lyman B. Frieze, for damages, for the non-performance of said contract, and for certain sums of money which the said corporation claimed had been expended by them for labor, materials, and machinery, which
7 they alleged to be within the contract with this complainant, all which claims your orator avers to have been unwarranted and unjust, and for which neither himself nor his estate were liable. And that thereupon the said corporation neglected and refused to come to any settlement with your orator, and his said assignee, but persisted in their unjust claims as aforesaid.

And your orator further states that his said assignee and himself made repeated attempts to obtain a settlement with said corporation, and demanded that the certificates of stock should be issued to said assignee for the benefit of your orator's creditors, all which attempts at settlement were frustrated by the neglect and refusal of said defendant corporation to render any statement of their accounts with your orator and his said assignee. And your orator further states that after said contract had been completed, and with a view to the payment of all his debts, and the settlement of all matters connected with said assignment, and the obtaining a re-conveyance of said assigned property, he procured certain friends of his to offer to advance a sufficient sum for the payment of his said debts, provided they could receive the interest in the property of said Atlantic De Laine Company which belonged to your orator's estate. And your orator, in company with said persons, called upon the treasurer of said corporation for a statement of its affairs and for a statement of its account with your orator and his estate, with a view to the settlement thereof, but said statements were refused by said treasurer, and your orator was prevented thereby from obtaining the ad-

vance of money, and making the settlement which he contemplated and desired.

And your orator further avers that subsequently, to wit, on the fifth day of February, A. D. 1853, the said George W. Chapin as trustee, in violation of the clear, distinct, and positive understanding with your orator, and the assurance of said Chapin, as trustee and as treasurer of said defendant corporation, that said stock of your orator in said corporation should be held and retained by your orator and his assignee until the same could be disposed of at its full value, advertised the estate of your orator other than his interest in the property of said defendant corporation, which had been mortgaged on the first day of August, A. D. 1851, to be sold on the 25th day of February, A. D. 1853,
8 and the right, title, and interest of your orator in and to the capital stock of said Atlantic De Laine Company, and in and to the real and personal estate of said company mortgaged as aforesaid, on said first day of August, A. D. 1851, to be sold on the 26th day of February, A. D. 1853, under the power contained in said mortgage. And that thereupon the said defendant, Lyman B. Frieze, assignee of your orator, filed his bill in equity, in the clerk's office of the supreme court of the State of Rhode Island, within and for the county of Providence, on the twenty-second day of February, A. D. 1853, against George W. Chapin, trustee, and the Atlantic De Laine Company, wherein, after setting forth the contract between this complainant and the said corporation, he claimed that there was due his assignor, this complainant, from said Atlantic De Laine Company, outside of his said contract, the sum of fifty-five thousand dollars; and further setting forth certain mortgage to George W. Chapin, as trustee, from this complainant, dated August first, A. D. 1851, given to secure the payment of the sum of seventy-five thousand dollars, he averred that certain bonds of the Cannelton Manufacturing Company, of the par value of fifty thousand dollars, which had been placed in the hands of said George W. Chapin, trustee, had been sold by him, and that he had received therefor the sum of twenty-five thousand dollars, which had been applied to the payment of said sum of seventy-five thousand dollars, which said mortgages had been given to secure. And further, that the proceeds of the sale of a certain farm in Warwick, Rhode Island, included in one of said mortgages, had been, after the payment of a prior mortgage, applied to the payment of said sum of seventy-five thousand dollars, to wit, the sum of about five thousand six hundred dollars; and that the proceeds of the sale of stock on said farm had also been applied to the payment of said sum of seventy-five thousand dollars, making in all payments thereon to about the sum of thirty-two thousand dollars. That the property held under said mortgages was greatly more than sufficient to pay the residue of said debt; that all efforts on his part, as assignee, to obtain an account of the condition of the affairs of said company, in order that he might ascertain the value of the stock held by him as assignee, so that it might be disposed of to the greatest advantage for the benefit of the creditors of his assignor, had been vain, said Chapin having repeatedly refused to render the same; that said property described in said mortgages had been
9 advertised for sale on the twenty-fifth and twenty-sixth days of February, and prayed that inasmuch as an account of the affairs of said Atlantic De Laine Company had been refused, as the security for said debt was ample, as the parties defendant were largely indebted to his assignor and himself as assignee, and their accounts by agreement referred to arbitrators, as the said parties had promised to transfer the said mortgages to any person who would pay the amount due

thereon, and had, shortly before the filing of his bill by said assignee, refused to transfer the same, although the amount due on said debt had been offered them, and as a sale at the time fixed in the advertisement would be an irreparable injury to him and the creditors of his assignor that said George W. Chapin, as trustee, and as treasurer of said defendant corporation, might be decreed to render a statement and account of all the business and condition of said Atlantic De Laine Company and its property, of the true amount due on said mortgages, deducting the amount due from said Atlantic De Laine Company to this complainant or to his said assignee, that said George W. Chapin might be decreed to assign and transfer said mortgages to any person who would pay the amount due on the same, the said Lyman B. Frieze offering to redeem the same, or to see that the amount due thereon was paid; and that said George W. Chapin, and all parties acting for him or under him, might be enjoined from proceeding with said sales, or either of them.

And your orator further states that on the said twenty-second day of February, A. D. 1853, the said defendant, Lyman B. Frieze, assignee of your orator, filed his petition in the clerk's office of the supreme court of the State of Rhode Island, within and for the county of Washington, against George W. Chapin, trustee, and the Atlantic De Laine Company, wherein, after averring that he had filed his bill of complaint against said parties defendant, and setting forth in part the substance thereof, as hereinbefore set forth, he averred that the persons and firms for whom said Chapin acted as trustee formed the Atlantic De Laine Company, with the addition only of the said Lyman B. Frieze in right of this complainant, and Day, Owen & Co., which last firm were interested only to the amount of about three thousand dollars; and that the refusal to furnish an account was believed to be from a design to throw a cloud upon the value of the shares of stock of this complainant, and to prevent the said assignee from selling them at a fair price, and to deter all but themselves and their confederates from purchasing; that if the property should be sold without any account being rendered, this complainant and his creditors would suffer and be defrauded, since they, the said defendants, only knew the real value of said stock, and that for the pupose of depreciating the value of said shares of stock it had been represented that said Atlantic De Laine Company had lost money by its operations, although the directors thereof had stated the contrary, and assured the said petitioner that the stock would soon be a good dividend-paying one; that such a sale would be an unjust advantage taken by said mortgagees, aiming not to obtain their just debt, amply secured, but directly or indirectly, the property assigned, at much less than its fair value. He therefore prayed for an injunction forbidding said George W. Chapin and all persons from proceeding to sell all or any part of the property advertised to be sold on the twenty-fifth and twenty-sixth days of February, A. D. 1853.

And your orator further states that subsequently, and before the time appointed for said sale, the said court granted the prayer of said petition, and enjoined the sale of said shares of stock in the Atlantic De Laine Company, mentioned and described in said mortgage, dated August first, A. D. 1851, until the said Chapin had communicated to the petitioner all the knowledge he had of the affairs of said company which affected the value of said shares of stock.

And your orator further avers that thereupon the said corporation, by their treasurer, George W. Chapin, rendered certain statements to the said defendant, Lyman B. Frieze, assignee of your orator as aforesaid, which he pretended were a proper statement of the accounts be-

tween said complainant and said defendant corporation, and a correct statement of the affairs of said defendant corporation, which statements your orator avers to have been incorrect and untrue, and that the said defendant, Lyman B. Frieze, was deceived thereby, and thereupon, and without the consent of your orator, and to his express dissent, the said defendant, Lyman B. Frieze, entertained a proposition from the said defendant corporation for the settlement of said suit, which resulted in the withdrawal of the same and the execution of mutual releases between the said defendant corporation, which releases are hereto annexed, marked "C" and "D," and made parts of this bill.

11 And your orator further states that he never in any way authorized said settlement, or the execution of said conveyance by said assignee, or the acceptance of said release by him, and that he never gave his assent to the same; and he avers that the same were procured to be executed on the part of his said assignee, and accepted by him by incorrect statements of the accounts between your orator and his estate and said Atlantic De Laine Company, and of the affairs of said defendant corporation; and that the same were made with intent to deceive and defraud the said assignee, the said defendant, Lyman B. Frieze, and your orator, and to obtain the shares in the capital of said defendant corporation without paying their just value therefor. And your orator further avers that the attempt to foreclose the mortgage on said stock, by the sale thereof, under the power contained in said mortgage, and without rendering a proper statement of the affairs and condition of said corporation, and the refusal to render the same when requested so to do by said assignee, the said defendant, Lyman B. Frieze, was also with the intent to obtain said stock at less than its fair value, and that the acts of said defendant corporation, and of its said treasurer and other officers, with regard to said stock and said sale, were done for the purpose of deterring purchasers from bidding at said sale, and to obtain said stock at less than its fair value, to the injury of your orator and his said estate, in the hands of his said assignee, the said defendant, Lyman B. Frieze.

And your orator further avers that the conveyance of said stock by his assignee, the said defendant, Lyman B. Frieze, to said defendant corporation, was and is utterly void and of no effect, by reason of the fraud and deceit practiced upon said assignee, the said defendant, Lyman B. Frieze, by said defendant corporation.

And your orator further states that since the date of said assignment he has been released and discharged from all debts, obligations, and liabilities then outstanding, with the exception of a judgment recovered on certain notes in the name of said defendant, George W. Chapin, which notes and judgment your orator believes, and therefore avers, were and are the property of said defendant corporation, and, as such, should be properly included in an account to be taken be-

12 tween your orator and said defendant corporation. And he further states that all the expenses of executing said assignment, and all the claims directed to be paid therein, have been paid and discharged, with the exception of the debt due to said Atlantic De Laine Company, and their treasurer as aforesaid, and that your orator is entitled to have a re-conveyance from his said assignee, the said defendant, Lyman B. Frieze, of all the estate and property remaining in his hands. And he further states that in addition to the one hundred and fifty shares of the capital stock of said Atlantic De Laine Company, of the par value of one hundred and fifty thousand dollars, as aforesaid, there was due to your orator and his estate from said defendant corporation, for work,

labor, and materials furnished and expended in and upon the property of said defendant corporation, and with their consent and authority, which were not called for by, nor included in, the contract between said defendant corporation and your orator as aforesaid, a large sum of money, to wit, the sum of fifty five thousand dollars and upwards, and that the said defendant corporation had no just and legal claim against your orator, or his said assignee, the said defendant, Lyman B. Frieze, equal to the amount of said charges and the value of said stock, and the release of said extra charges could not have been procured from said assignee except upon the false and fraudulent statement of accounts, and the concealment of the true condition of the affairs of said defendant corporation.

And your orator further avers that he is ready and willing, and hereby offers, to pay the amounts in which he was indebted to said George W Chapin, as attorney and trustee as aforesaid, and to said defendant corporation, with interest, upon a true statement of the accounts between them, whenever they shall convey to him the stock and securities which they held and attempted to convert to their own use for the amount of said debt, and which they now hold.

All which actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In consideration whereof, and forasmuch as your orator is without remedy at common law, and can only have relief in a court of equity, where such matters are properly cognizable and relievable; to the end, therefore, that the said Atlantic De Laine Company, said George W. Chapin, and said Lyman B. Frieze, may, upon their several and respective corporal
13 oaths, full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated, charged, and set forth, and that not only as to the best of their several and respective knowledge and remembrance, but also as to the best of their several and respective information and belief, and that said defendants may answer the premises as fully and particularly as if they had been specially interrogated thereto; and that the said release, made by the said defendant Lyman B. Frieze to said defendant corporation, may be declared to be void and set aside as having been obtained by fraudulent representations and concealment as aforesaid; and that the said defendant corporation may be declared to hold said stock as the trustees of your orator, and that an account may be taken of all the dealings between your orator and said defendant corporation, and said defendant, George W. Chapin, in his capacity as aforesaid under said contract and otherwise, and that he may be declared to be entitled to a conveyance and transfer of said one hundred and fifty shares of the capital stock of said defendant coporation upon his paying the sum that may be justly found to be due upon the settlement of his accounts with said defendant corporation as aforesaid; and that said defendant, George W. Chapin, and said defendant, Lyman B. Frieze, may be required to convey and release to your orator all their interest in the said stock, upon the settlement of said accounts and the payment of said balance as aforesaid, and that your orator may have such other and further relief in the premises as the nature of the case shall require, and to your honors shall seem meet:

May it please your honors to grant unto your orator a writ of subpœna, in due form of law, to be directed to said Atlantic De Laine Company, said George W. Chapin, and said Lyman B. Frieze, thereby commanding them and every of them, under a certain pain therein to be specified, personally to appear before your honors, in this honorable court,

then and there to answer all and singular the premises, and to stand, to abide, and perform such order and decree as to your honors shall seem meet. And your orator will ever pray.

CHAS. T. JAMES.

T. A. JENCKES,
Solicitor for Complainant.

14 A

Know all men by these presents that I, Charles T. James, of the city of Providence, county of Providence, and State of Rhode Island, in consideration of the sum of ten dollars to me paid by Lyman B. Frieze, of said Providence, and in further consideration of the trusts hereinafter created, and by the said Lyman B. Frieze to be fulfilled and performed, do hereby give, grant, bargain, sell, alien, assign, release, convey, and confirm unto him, the said Lyman B. Frieze, his heirs and assigns forever, in trust, all the estate and property following, namely:

All that real estate situate in the westerly part of Providence aforesaid, where I now reside, containing by estimation about four acres of land, together with all the buildings, improvements, and fixtures thereon, with all the privileges and appurtenances thereof; also, all my household furniture, including pictures, statuary, and library; also my horses, carriages, and harnesses, and also all personal property of every kind and description in and about my said residence, office, and buildings, and homestead estate;

Also, all my estate situate in Warwick, in the county of Kent, in said State, called and known as the James Rhodes farm, and which I bought of Josiah Chapin, esq., containing by estimation about two hundred and seventy acres, more or less, with all the buildings and improvements thereon, reference to the conveyance from the said Josiah Chapin to me being had for a more particular description thereof, together with all the privileges and appurtenances thereof; also all the neat stock, horses, swine, poultry, farming tools, implements, fixtures, carts, carriages, crops growing, grain, produce, and provisions on said farm, or used therewith, hereby conveying all my personal property of every kind and nature, on or about, or used with said farm;

Also, my estate situate in the town of Scituate, in said State, on the Killingly road, called the Harley Phillips estate, reference to the deeds thereof from Lewis A. Phillips and others to me being had for a more particular description thereof, together with all the buildings and
15 improvements thereon, and hereby conveying all my stock of every kind, name, and description on said premises, and all crops, produce, farming tools, implements, and all other property to me in any wise belonging, on or used with said farm; said farm containing by estimation about one hundred and thirty acres;

Also, a certain other lot of land, situate in said town of Scituate, adjoining the last above on the west, containing about forty acres, reference to the deed thereof from Cyril Cornell to me being had for a more particular description of the same;

Also, all my shares and stock in the Atlantic De Laine Company, a corporation created by the legislature of said State of Rhode Island, and having its mill at Olneyville, in North Providence, in said State, being one hundred and fifty shares of the capital stock of said company, meaning and intending to assign and convey, and hereby assigning and conveying, to said Lyman B. Freize, his heirs and assigns forever, in trust, all my right, title, and interest in and to all the real estate of said

company or corporation, and all fixtures, machinery of every kind, steam-engine, steam-boilers, shafting, gearing of said corporation, and all stock of wool and materials, and to all the estate and property, real and personal, of every kind and nature in and of said corporation, wherever situated;

Also, hereby assigning all sums of money and debts of every kind due or owing to me from said last-named corporation, in whatever form, together with all the evidences thereof;

Also, all my shares and stock in the Saunders Cotton Mill, a corporation created by the legislature of the State of Massachusetts, and located and doing business at Grafton, in said State, the shares belonging to me in said corporation being one hundred and twenty-five, hereby intending to convey, and conveying, all my right, title, and interest in and to all the stock of said corporation, and also in and to all the real and personal estate of said corporation, of every kind and nature, wherever the same may be;

Also, all my shares and stock, being one hundred shares, in the Rockport Steam Cotton Company, a corporation created by the legislature of the State of Massachusetts, and situated at Rockport, Massachusetts, meaning and intending to convey, and hereby conveying, all my right, title, and interest in and to all the estate and property of said corporation, real and personal, of every kind and nature, wherever the same may be situated;

16 Also, all my shares and stock, being one hundred shares, in the Montauk Cotton Manufacturing Company, a corporation created by the legislature of New York, and located and doing business at Sag Harbor, on Long Island, in the State of New York; meaning and intending to convey, and hereby conveying, all my right and title and interest in and to all the estate and property, real and personal, of said corporation, of every kind and nature whatever and wherever situated;

Also, all my shares and stock, being one thousand and twenty shares, in the Conestoga Steam Mills, a corporation created by the legislature of Pennsylvania, and located and doing business at Lancaster, in said State, meaning and intending hereby to convey, and conveying, all my right, title, and interest in and to all the estate and property of said corporation, real and personal, of every kind and nature, and wherever the same may be situated;

Also, hereby assigning and conveying all sums of money and claims of every kind due or owing to me from said last-named corporation, in whatever form, together with all the evidences thereof;

Also, all my shares and stock, being two hundred and fifty shares, in the capital stock of the Harrisburg Steam Cotton Manufacturing Company, a corporation created by the legislature of the State of Pennsylvania, and located and doing business at Harrisburg, in said State, meaning and intending hereby to convey, and hereby conveying, all my right, title, and interest in and to all the estate and property of said corporation, real and personal, of every kind and nature, and wherever the same may be situated;

Also, all my shares and stock, being, as I believe, one thousand shares, in the Reading Cotton Manufacturing Company, a corporation created by the legislature of Pennsylvania, and located and transacting business in Reading, in said State; the amount of stock owned by me in said corporation being fifty thousand dollars; but the certificates not having been issued, I am not certain of the number of shares, meaning hereby to convey, and hereby conveying, all my right, title, and interest in and

to all the estate and property of said corporation, real and personal, of every kind and nature, and wherever the same may be situated;

Also, all sums of money, all claims and demands of every kind
17 and nature, due and owing to me from said corporation last named, whether due me on contracts, book account, or in any other manner, together with all the evidences thereof;

Also, all my shares and stock, being one hundred and thirty-five shares, in the capital stock of the Cannelton Cotton Manufacturing Company, a corporation created by the legislature of the State of Indiana, and located and doing business at Cannelton, in said State; meaning hereby to convey, and hereby conveying, all my right, title, and interest in and to all the estate and property of said corporation, real and personal, of every kind and nature, and wherever the same may be situated; also, all sums of money, and claims of every kind and nature due and owing me from said last-named corporation, whether the same may be due me on contract, completed or to be completed, or on book account, or in any other way whatever, together with all the evidences thereof;

Also, all my shares and stock, being one hundred and twenty-five shares, in the capital stock of the American Cannel Coal Company, a corporation created by the legislature of the State of Indiana, and located and doing business at Cannelton, in said State; meaning hereby to convey, and hereby conveying, all my right, title, and interest in and to all the estate and property of said corporation, real and personal, of every kind and nature, and wherever the same may be situated, including all rights of mining of every kind and nature;

Also, all my shares and stock, being one thousand shares, in the East Tennessee Mining and Manufacturing Company, a corporation created by the legislature of the State of Tennessee, and located and doing business in the city of New York, meaning hereby to convey, and hereby conveying, all my right, title, and interest in and o all the estate and property of said corporation, real and personal, of every kind and nature, wherever the same may be situated, including all mining land and rights of mining whatever;

Also, four lots of land in said city of Providence, on Carpenter street, all lying just northerly of the estate occupied by me in this city, containing by estimation about half of one acre of land;

Also, all my right, title, and interest in and to all the property and right of property in Otis, in the county of Berkshire, in the State of Massachusetts, conveyed to me by two certain deeds, one from
18 Alonzo Waterman, dated March 30th, 1850, and the other from George W. Wells, dated the 5th day of May, 1851, reference to said deeds being had for a more particular description of said property;

Also, one hundred and twenty shares of the capital stock of the National Bank in said city of Providence. Also, two hundred shares of the capital stock of the Bank of America in said city of Providence;

And also hereby assigning and conveying to the said Lyman B. Frieze, his heirs and assigns forever, in trust, all my goods, chattels, rights and credits, debts, demands, choses in action, account books, and evidences of debt of every kind and nature from whomsoever and however due or owing, and all machinery and fixtures of every kind and nature, and also all my estate and property, real and personal and mixed, of whatever name, kind, or nature, or wherever the same may be situated:

To have and to hold all said estate and property of every kind hereby conveyed, with all the privileges and appurtenances thereof, to him,

the said Lyman B. Frieze, his heirs and assigns, forever, in trust, for the uses and trusts hereinafter declared and specified, that is to say, in trust that he shall, as soon as may be, take possession and charge of all said estates and property hereby conveyed, keep the same in proper repair, and so many and such portions of them insure, and in such amount, as he in his discretion may deem best, and otherwise manage all said estates and property in such manner as shall, in the exercise of his discretion, seem most for the benefit and advantage and interest of all concerned.

And whereas I, the said Charles T. James, am under contract with the said Atlantic De Laine Company to complete their new mill in said O'neyville, and get the same ready for operation, reference to my said contract with them being had for terms thereof, and whereas said contract has been by me mostly completed, and requires only a small expenditure to entitle me to receive from said company all the sums of money stipulated to be paid by them to me by said contract; deeming it best for my creditors and all interested, that my said assignee should proceed and complete said contract with said company, I hereby fully authorize, empower, and require him to go on and complete said contract with said De Laine Company, according to my said contract, and hereby empower him to complete all such contracts, and to do all acts and things requisite for the completing of my contract with said De Laine Company, and to appropriate therefor out of the assigned property so much only as may be necessary to complete what now remains to be done or completed of said contracts, and no more; hereby excluding any appropriation of any of said property under this clause, for the purpose of paying only balances or debts now due from me on said contracts, and restricting such appropriations to paying for work hereafter to be done, and for machinery and materials hereafter to be delivered for the above purpose;

19

And whereas I am also under contract with the Reading Cotton Manufacturing Company, in Reading, Pennsylvania, the Harrisburg Steam Cotton Manufacturing Company, in Harrisburg, Pennsylvania, the Conestoga Steam Mill Company, in Lancaster, Pennsylvania, the Cannelton Cotton Manufacturing Company, in Cannelton, Indiana, for building mills for said companies, reference being had to said contracts with them for terms thereof, a very small amount of work only now being required to complete the same and entitle me to receive the amount stipulated to be paid to me by said companies therefor; and believing it best for all interested, I hereby authorize, empower, and require my assignee to go on and complete said last-named contracts, and to appropriate the amount necessary therefor out of the property hereby assigned.

And as soon as may be practicable, considering the nature of the property and the circumstances, and at such time and times as my said assignee shall think most for the benefit of all parties interested in the proceeds thereof, he shall sell at public or private sale, for cash or on reasonable credit, so much of the estate and property hereby assigned and conveyed as shall be found necessary to carry out the objects of this assignment as herein provided; and shall, as soon as may be practicable, collect all the debts and claims hereby assigned, and out of the proceeds thereof first pay, in full, the amounts necessary to complete all the aforesaid contracts, and all the expenses of the making this assignment, and also all costs, charges, and expenses of every kind attending the carrying into effect and final execution of all trusts hereby created, besides a reasonable compensation to said assignee for his services.

And after the payment in full of all the preceding, he, the said assignee, shall appropriate and apply the residue of the proceeds of all such sales and collections in the order and manner and for the purposes following, namely:

20 First. To the payment in full of all sums of money due from me, the said Charles T. James, to all persons for work and labor by them for me actually done and performed within this State of Rhode Island; and also to the payment in full of all sums of money due from me, the said Charles T. James, to all persons for work and labor by them for me actually done and performed in the State of Pennsylvania; also to the payment in full of a certain note in favor of said Lyman B. Frieze for five thousand dollars, for payment of help, dated August 29, 1851, at four months; also a certain other note in favor of said Lyman B. Frieze for three thousand two hundred and seventy-five dollars and fifty-six cents, borrowed money; also a certain other note in favor of said Lyman B. Frieze, for three thousand two hundred and fifty seven dollars and ninety-six cents, for borrowed money, one of the two notes last above-named bearing date August 1, 1851, at three months, and the other bearing date August 1, 1851, at four months.

Second. To the payment in full of all debts due from me to the persons hereinafter named, to wit, to Thurston, Greene & Co., Providence Machine Company, James C. Bucklin, Narragansett Brick Company, Albert Dailey, Lewin & Fiske, Martin A. Snow, Seth Padelford & Co., George H. Whitney, William Arnold & Sons, Phenix Iron Foundry, O. Mason & Co., Edward Williams, Nathaniel G. Thorn, Lyman B. Frieze, Alfred R. Fiske, David Longnecker, Coggeshall & Barstow, Providence Tool Company, Henry A. Denny & Sons, Bank of America, Thomas Seekell, Sweet & Carpenter, Providence Steam Gas-Pipe Company, John Kendrick, Bailey & Mason, James Boyd, Sheldon & Davis, Bancroft & Sellers, Henry A. Denny, Barker and Whitaker, Samuel A. Durfee, Farmers' Bank, Lancaster, Pa., Lancaster Bank, Lancaster, Pa., Robert T. Ross, cashier, Harrisburg, Pa., Allen Shaw, Pierce & Luther, C. & D. P. Dyer, John Herring, Peter Grinnell & Sons, Calder & Phillips, Beals, Bush & Co., and Cyrus B. Manchester, and Blackstone Canal Bank.

Third. After paying all the preceding in full out of the said proceeds, then to pay in full all sums of money due from me and secured by a certain mortgage-deed made and executed by me, said Charles T. James, to George W. Chapin, of the city of Providence, in trust for the persons therein named, said mortgage-deed bearing date the day of

21 , A. D. 1851, reference being had to said mortgage-deed and the record in the city of Providence or elsewhere, for the terms thereof, and to ascertain the debts therein and thereby secured, in order to release the same.

Fourth. After paying all the preceding in full, then to pay in full all sums of money due from me and secured by a certain mortgage-deed made and executed by me, the said Charles T. James, to the Blackstone Canal Bank, in the city of Providence, said mortgage-deed bearing date the day of A. D. 1851, reference being had to said mortgage-deed, and the record thereof, for the terms thereof, and to ascertain said debts, secured therein and thereby, in order to release the same, a large portion of said debt, secured by said mortgage-deed, having already been paid.

Fifth. After the payment in full of all the preceding, to pay in full all sums of money due from me to William Mason & Co., of Taunton, county of Bristol, and State of Massachusetts, and Willis & Co., Boston.

Sixth. After the payment in full of all the preceding, in the manner and order herein specified, then to apply and appropriate the residue of all said sales and collections to the payment in full, if sufficient, and ratably and proportionably in case such residue should be insufficient to pay in full all debts due from me to all persons whatever.

Seventh. If any surplus remain after full payment as aforesaid, to pay the same to me, the said Charles T. James, my heirs, executors, administrators, or assigns.

And I, the said Charles T. James, hereby authorize and empower my said assignee to dispose of any of said assigned property to the persons to whom I am indebted, in liquidation and settlement of my debts due from me, taking care, however, in all cases, that said property be applied to the payment of my said debts in the order and manner hereinbefore specified and provided; and said assignee is hereby fully authorized and empowered to submit to reference or arbitration, and himself to compromise and adjust, all disputed matters growing out of the assignment, and to make such arrangements and settlements as he shall deem most advantageous for all parties interested in said assigned property. And I also authorize and empower my said assignee to appoint, from
22 time to time, attorneys under him, hereby giving my said assignee full power and authority to sign, seal, and fully execute all papers, transfers, and conveyances, and to do all acts, matters, and things requisite for the carrying the trusts herein and hereby created into full execution; always, however, hereby expressly excepting, saving, and reserving from the effect of this instrument two certain patent-rights originally granted to Frederic E. Sickells, one bearing date the twentieth day of May, A. D. 1842, and the other bearing date the nineteenth day of September, A. D. 1845, which said patent-rights are now my own property, and both which I retain.

Interlined ("with said") at page 9th.

In testimony whereof I have hereunto set my hand and seal this second day of September, in the year of our Lord one thousand eight hundred and fifty-one.

CHAS. T. JAMES. [L. S.]

In presence of—
JACOB FRIEZE.
HENRY MARTIN.

And I, Lyman B. Frieze, named as assignee in the above instrument, hereby accept of said assignment and covenant, and agree to fulfill and perform the trusts therein created.

Witness my hand and seal this second day of September, in the year of our Lord one thousand eight hundred and fifty-one.

LYMAN B. FRIEZE. [L. S.]

In presence of—
JACOB FRIEZE,
HENRY MARTIN.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence County, ss:

In Providence, this second day of September, A. D. 1851. Then Charles T. James and Lyman B. Frieze personally appeared before me, and severally acknowledged the preceding instrument, by them signed, to be their free act and deed for the uses and purposes therein named.

HENRY MARTIN,
Justice of the Peace.

23 THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence County, ss:

In Providence, this second day of September, A. D. 1851, before me, the subscriber, a commissioner, resident in said State, appointed by the governor of the State of Massachusetts to take the acknowledgment of deeds and other writings under seal, to be used or recorded in said State of Massachusetts, personally appeared Charles T. James and Lyman B. Frieze, and severally acknowledged the preceding instrument, by them signed, to be their free act and deed for the uses and purposes therein named. Given under my hand and official seal as such commissioner.

HENRY MARTIN, [L. S.]
A Commissioner of the State of Massachusetts.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence County, ss:

I, Henry Martin, a commissioner for the State of New York, residing in Providence, in the county of Providence and State of Rhode Island, do certify that on the second day of September, in the year one thousand eight hundred and fifty-one, in the city of Providence, in the county of Providence aforesaid, personally appeared, before me, Charles T. James and Lyman B. Frieze, who are personally known to me to be the individuals described in and who have executed the foregoing instrument, and they then and there acknowledged to me that they executed the said instrument for the purposes and uses therein named.

In witness whereof I have hereunto set my hand and official seal, at Providence, in the county and State aforesaid, this second day of September, one thousand eight hundred and fifty-one.

[L. S.] HENRY MARTIN,
A Commissioner for the State of New York.

24 THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence County, ss:

Be it remembered that on this second day of September, in the year of our Lord one thousand eight hundred and fifty-one, before me, Henry Martin, a commissioner for the State of Pennsylvania, resident in the State of Rhode Island, to take the acknowledgments and proof of deeds, and other writings under seal, to be used or recorded in said State of Pennsylvania, personally appeared Charles T. James and Lyman B. Frieze, both personally known to me, and severally acknowledged the preceding instrument, by them signed and sealed, to be their free act and deed for the uses and purposes therein named, and desired that the same as such might be recorded according to law.

Witness my hand and seal as such commissioner the day and year above written.

HENRY MARTIN, [L. S.]
A Commissioner for the State of Pennsylvania.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence County, ss:

On this second day of September, in the year of our Lord one thousand eight hundred and fifty-one, before me the undersigned, a commissioner resident in said State, appointed by the governor of the State of Indiana to take the acknowledgment of deeds and other writings under seal, to be used or recorded in said State of Indiana, personally came Charles T. James and Lyman B. Frieze, both personally known to me, and sev-

erally acknowledged the within instrument, by them signed and sealed, to be their voluntary act and deed for the uses and purposes therein expressed.

Given under my hand and official seal as such commissioner.

HENRY MARTIN, [L. S.]
A Commissioner for the State of Indiana.

Recorded Sept. 6, 1851, in book No. 120, pages 375, 6, 7, 8, 9, & 380, 1, 2, & 3 of the records of deeds, in the city of Providence, R. I.

Witness:

ALBERT PABODIE, *City Clerk.*

25 Recorded in Warwick records in the 28th book of Land Evidence, at pages 324, 325, 326, 327, & 328, the 13th day of September, A. D. 1851.

Witness: WM. HARRISON, *Town Clerk.*

Received for record in Scituate Sept. 16, 1851, and recorded in book No. 19, pages 236, 37, 38, 39, 40, 41, 42, & 43 of the records of said Scituate for recording deeds, &c.

Witness: J. A. HARRIS, *Town Clerk.*

Lodged for record in North Providence Sept. 24th, 1851, at 5 o'clock p. m.; recorded in North Providence Registry of Deeds, pages 119 to 122, inclusive, book 17 of North Providence Registry of Deeds.

Attest: J. H. WEEDEN, *Town Clerk.*

B.

This agreement, entered into this first day of January, A. D. 1851, between Messrs. Hill, Carpenter & Co. and George W. Chapin, all of the city of Providence, and the said George W. Chapin as attorney for others of the first part, and Charles T. James, of said Providence, of the second part, witnesseth: That said Charles T. James hereby agrees to erect a building three hundred and three feet long, seventy feet wide, and three stories high, with a tower measuring twenty feet by thirty-eight on the ground, and one hundred feet high; also a wing or addition to said building one hundred and thirty-seven feet long by sixty feet wide, and three stories high; also another wing forty feet long, twenty-six feet wide, and two stories high, for a cotton-picker house and store house; also a store and counting house to be included in one building eighty feet long by forty feet wide, and two stories high; said building also to include an office or offices for clerk and agent, and the remainder to be used as a store-house. The whole of said building to be of good materials and workmanship, in accordance with the plans and specifications for the same, now on file in the office of said James, and properly adapted to the purpose of a mill for the manufacture of mouselin de laines. The said buildings to be erected on certain
26 lands in the town of North Providence, in said Rhode Island, purchased by said party of the first part for that purpose. And said Charles T. James hereby agrees to furnish all the materials and labor, every sort and description, at his own cost and expense for said buildings.

And the said James, of the second part, also hereby agrees to place, or cause to be placed, in said buildings, also at his own cost and expense, the following-named machinery, to wit:

FOR THE COTTON DEPARTMENT.

Nine thousand eight hundred and ninety-six self-acting mule-spindles, together with all the preparation required to supply the same with cotton-roving; also ten dressers, spoolers, and warpers, and everything else necessary to make the cotton department perfect and complete, for the manufacture of warp; also,

FOR THE WOOLEN DEPARTMENT.

Sixteen cards for carding wool, similar to the last and most improved cards built at Manchester, New Hampshire, for that purpose, together with coarse and fine speeders, seven thousand five hundred and twelve self-acting mule-spindles, arranged and prepared to spin weft for the aforesaid cotton-warp, four hundred and eight looms to weave said warp and weft into cloth, and the necessary apparatus required in the woolen department to render the same perfect and complete.

Said Charles T. James also agrees to furnish and put up, also at his own cost and expense, a steam-engine of ample power to operate all the aforesaid machinery with perfect ease, together with four sets of woolen-machinery hereinafter named, with steam-boilers suitable for the aforesaid steam-engine.

The foregoing schedule, it is agreed and understood, includes all the shafting and belting, pipes for warming the mill and offices, tools for adjusting the machinery and making the ordinary repairs on the same; and all other things necessary and proper to make the said mill as perfect and complete, in all the several departments for the manufacture of mouselin de laines, as the said Charles T. James may be capable of making it. The whole to be put in good order and condition, to be received by the overseers and operatives by the first day of August, 1851, except prevented from so doing by loss of mill, building or buildings, or machinery intended for the mill, by land or sea, or fire or flood. In addition to the foregoing, said James hereby agrees, also at his own cost and expense, to furnish, prepare, and put up for use, or to
27 cause the same to be done, an apparatus for the manufacture of gas, sufficient to light the aforesaid mill and offices, together with all the necessary pipes, burners, and fixtures; also a forcing-pump to be connected with the steam-engine, to operate as a fire-engine, together with fire-plugs, hose, and all other apparatus requisite to render the same efficient and complete.

And the said party of the first part are, at their own expense and cost, to furnish and put up ready for operation, in the wing or addition aforesaid, four sets of woollen machinery, the said James only agreeing on his part, at his own cost and expense, to put up ready for operation all the shafting required to drive the same, together with the gas-pipe, burners, and fixtures to light the room, and the pipe to warm the same. All the foregoing work is to be done in the best manner, and all the requirements of this contract are to be carried out in good faith.

And the said Hill, Carpenter & Co. and the said George W. Chapin, for themselves, and said George W. Chapin as the legally constituted attorney of others, of the first part, hereby agree to pay to the said Charles T. James, of the second part, for all the aforesaid buildings, machinery, &c., which he has aforesaid agreed to erect, furnish, and put up, the sum of two hundred and sixty thousand dollars, in installments as follows, while the work is being carried forward and completed, viz: **Thirty-six thousand dollars on the fifteenth day of each of the months**

of January, February, March, April, May, and June, 1851, and the balance, forty-four thousand dollars, when all the machinery shall be placed within the walls of the buildings as aforesaid. It is also agreed that said party of the first part shall furnish all the land, remove all the buildings now standing on it, and bring or cause to be brought on all the loam and sand required to grade the land to all the levels arranged and designed by the said James in accordance with the designs for said mill-buildings. It is also understood and agreed that said James will take the general charge of said mill for the term of two years from this date, and to receive no other compensation for his services than the actual expense incurred in carrying out the object of his appointment.

CHAS. T. JAMES.
GEO. W. CHAPIN.
GEO. W. CHAPIN, *Attorney.*
HILL, CARPENTER & CO.

Witness,
L. B. FRIEZE.
GEO. A. BURROUGH.

28 *Endorsement on back of foregoing agreement.*

Whereas since the within agreement was entered into the parties thereto have procured an act of incorporation under the name of the Atlantic De Laine Company, of which they have become stockholders:

It is now hereby agreed by them that the said contract and all the obligations arising therefrom on the part of the parties of the first part, shall be assumed by the said corporation.

And the said James, on his part, agrees with the said corporation that he assents to the above assumption of the within contract, and will proceed in the execution and completion of all his part of the same, which is yet unperformed, for the use and benefit of the said corporation, in the same manner as if the said contract had originally been made with it, and hereby discharges the parties of the first part named in said contract from any personal obligations arising therefrom, except so far as they are legally bound as stockholders in said corporation.

HILL, CARPENTER, & CO.
GEO. W. CHAPIN.
GEO. W. CHAPIN, *Attorney.*
CHAS. T. JAMES.

PROVIDENCE, *Aug.* 1, 1851.

And I, Alfred R. Fiske, of Lancaster, in the State of Pennsylvania, in consideration of the above agreement, hereby agree to become associated with the said Charles T. James in the performance and completion of the said contract, and bind myself to the said corporation for the performance thereof, in the same manner as if I was originally a party thereto.

A. R. FISKE.

August 1st, 1851.
Witness: JOS. CARPENTER.

C.

Know all men by these presents, that whereas a settlement has been made between the Atlantic De Laine Company and Charles T. James and the assignee of said James, and between the individuals and firms herein-

after named, and the said Charles T. James and the assignee of said James; and whereas the individual firms hereinafter named have executed
29 a release to the said Charles T. James, bearing date the second day of March, A. D. 1853, reference to which may be had for the tenor and effect thereof; now, therefore, in consideration of such settlement and release, and of one dollar to me paid by the individuals and firms hereinafter named, I, Lyman B. Frieze, of Providence, in the county of Providence, assignee of Charles T. James, do hereby remise, release, and forever quitclaim unto Josiah Chapin, William C. Chapin, and George W. Chapin, doing business as the Globe Printing Company, in Providence; Edward Hoyt, Philip Tillinghast, Nehemiah Knight, and William Brenton Greene, doing business as Hoyt, Tillinghast & Co., in New York; Thomas T. Lea, Joseph Lea, Isaac Hacker, Thomas Kimbor, jr., A. E. Stephens, F. W. Helmsly, doing business as Hacker, Lea & Co., in Philadelphia; Paris Hill, Joseph Carpenter, and William J. Cross, doing business as Hill, Carpenter & Co., in Providence; Joshua C. Dodge, Alanson Tucker, jr., Lewis Mills, doing business as Dodge, Tucker & Co., in Boston, and Geo. W. Chapin, as trustee and attorney for others, their heirs, executors, administrators, all and all manner of actions, causes of actions, debts, dues, claims, and demands, both at law and in equity, which against the said parties hereinbefore named, or any of them, whether as individuals, firms, or copartners, I, the said Lyman B. Frieze, assignee of the said Charles T. James, ever had, now have, or ought to have, for or by reason or means of any matter or thing, from the beginning of the world to the day of the date of presents.

In witness whereof I have hereunto set my hand and affixed my seal this second day of March, A. D. 1853.

[L. S.] LYMAN B. FRIEZE,
Assignee of Charles T. James.

Signed, sealed, and delivered in presence of—
GEO. W. CHAPIN.

PROVIDENCE COUNTY, *sc:*

In Providence, this eleventh day of March, A. D. 1853, then Lyman B. Frieze personally appeared before me, and in his capacity as assignee acknowledged the preceding instrument by him signed as assignee to be his act and deed.

HENRY MARTIN,
Justice of the Peace.

30 D.

This indenture of two parts, made and entered into this second day of March, A. D. 1853, by and between the Atlantic De Laine Company, a corporation established for manufacturing purposes by the general assembly of the State of Rhode Island, and Lyman B. Frieze, of said Providence, assignee of Charles T. James, under and by virtue of a deed of assignment executed by said James to him on the second day of September, A. D. 1851, witnesseth: That the parties aforesaid, having settled all claims held by said Atlantic De Laine Company against the said Charles T. James, and all claims held by said Atlantic De Laine Company against the said Lyman B. Frieze, as assignee of said James, and all claims held by said Charles T. James against the said Atlantic De Laine Company at the date of said assignment, and assigned by said James to said Frieze by the deed aforesaid. And the said Atlantic De Laine Company having accepted of the said Lyman B. Frieze as assignee, as aforesaid, in full settlement of the balance of said claims due

them, a conveyance of all the right, title, and interest which the said James, at the date of his said assignment, and which the said Lyman B. Frieze, as assignee of said James, now has in and to the capital stock and property of said corporation, said deed bearing date herewith, reference thereto being had:

Now, therefore, in consideration of the premises, the said Atlantic De Laine Company, for themselves and their successors and assigns, do hereby release and discharge the said Charles T. James, and the said Lyman B. Frieze, as assignee as aforesaid, and also individually, and also the estate of said Charles T. James, assigned to the said Lyman B. Frieze, of and from all claims and demands, actions and causes of action whatsoever, now held by said Atlantic De Laine Company against the said Charles T. James and the said Lyman B. Frieze as assignee as aforesaid, and also, individually, or against said assigned estate on his hands, or against them or either of them. And the said Lyman B. Frieze, assignee as aforesaid, for and in consideration of the premises,
31 doth hereby discharge the said Atlantic De Laine Company, and their successors, of and from all claims and demands, causes, and rights of action whatsoever, held by the said Charles T. James against the said Atlantic De Laine Company, at the date of his said assignment to said Frieze, and by him assigned to said Lyman B. Frieze, or which are now held by said Lyman B. Frieze against said Atlantic De Laine Company.

In witness whereof the said parties have hereunto set their hands and seals, this day and year aforewritten, the said Atlantic De Laine Company executing this deed by their treasurer, George W. Chapin, duly authorized hereunto.

ATLANTIC DE LAINE CO.
GEO. W. CHAPIN. [L. S.]
L. B. FRIEZE, [L. S.]
Assignee of Chas. T. James.

Executed in presence of—
HENRY MARTIN.

PROVIDENCE COUNTY, *sc:*

In Providence, this 11th day of March, A. D. 1853, then George W. Chapin personally appeared before me in his capacity as treasurer of the Atlantic De Laine Company, acknowledged the preceding instrument by him signed as treasurer to be his and their free act and deed; and at the same place and time Lyman B. Frieze also appeared before me, and in his capacity as assignee, acknowledged the preceding instrument by him signed as assignee to be his free act and deed.

HENRY MARTIN,
Justice of the Peace.

32 RHODE ISLAND DISTRICT, *sc:*

[L. S.] The President of the United States of America to the Atlantic De Laine Company, a corporation created by the legislature of the State of Rhode Island, and located and transacting business in the county of Providence, in said State, a citizen of said State of Rhode Island, and George W. Chapin of said city and county of Providence, and a citizen of said State of Rhode Island, and Lyman B. Frieze of said city and county of Providence, a citizen of said State of Rhode Island, greeting:

For certain causes offered to our circuit court for the first circuit within and for the Rhode Island district. In chancery. We hereby

command and strictly enjoin you and each of you that, laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court in Providence, on Monday the fourth day of April next, being the rule-day of said court, and then and there full, true, and perfect answer make, upon your several corporal oaths, to the bill of complaint of Charles T. James, of the city, county, and State of New York, a citizen of said State of New York, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ, by reading the same to the said Atlantic De Laine Co., George W. Chapin, and Lyman B. Frieze, or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule day aforesaid.

Witness the Hon. Roger B. Taney, our Chief-Justice, at Providence, this first day of March, A. D. 1859.

HENRY PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return-day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

33 UNITED STATES OF AMERICA,
Rhode Island district, sc:

MARCH 1*st*, 1859.

I have this day made service of the within subpœna, by serving George W. Chapin, treasurer of the Atlantic De Laine Company, George W. Chapin, and Lyman B. Freize each with a true and attested copy of the within as commanded.

R. CLAPP,
Dep. U. S. Marshal.

Fees: 3 services, 6.00; 3 copies, 1.50; 3 miles travel, 18—$7.68.

Circuit court U. S., Rhode Island district, sc.

CHARLES T. JAMES
vs.
ATLANTIC DE LAINE CO. ET AL. } In equity.

Demurrers of the Atlantic De Laine Company.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for causes of demurrer show:

That it appears by the said bill that the same is exhibited against those defendants, and Lyman B. Frieze and George W. Chapin as defendants thereto for several distinct matters or causes, in many of which, as appears by the said bill, this defendant is in no way interested, and by reason of such distinct matters the said bill is drawn out to a considerable length, and these defendants are compelled to take a

copy of the whole thereof, and by joining distinct matters together, which do not depend on each other, the proceedings in the progress of the suit will be intricate and prolix, and these defendants be put to unnecessary charges and expenses in matters which in no way concern them.

34 That it appears by said bill that the complainant charges these defendants with having rendered certain statements to the said Lyman B. Frieze which were incorrect and untrue, and that such incorrect statements of account were made with intent to defraud and deceive the said Lyman B. Frieze, but does not allege and specify in what respect the said statements of accounts were incorrect and untrue, or in what manner or in what respect the said Frieze was deceived or defrauded thereby, whereby these defendants are unable to know what specific charges of fraud are made against them and cannot answer the same.

And, therefore, and for other good causes of demurrer in said bill contained, these defendants do demand the judgment of this honorable court, whether they shall be compelled to make any other or further answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

THE ATLANTIC DE LAINE CO.,
By their solicitors, A. PAYNE,
R. W. GREENE.

We certify that in our opinion the above causes of demurrer are sufficient.

A. PAYNE.

Demurrers of Geo. W. Chapin.

This defendant, by protestation, not acknowledging or confessing all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto, and for cause of demurrer, sheweth:

That it appears by said bill that the same is exhibited against this defendant, and Lyman B. Frieze and the Atlantic De Laine Company as defendants thereto, for several distinct matters or causes, in many of which, as appears by said bill, the defendant is in no way interested, and by reason of such distinct matters the bill is drawn out to a considerable length, and this defendant is compelled to take a copy of the whole thereof, and by joining distinct matters together which do not depend on each other, the proceedings in the progress of the suit will be intricate and prolix, and this defendant be put to unnecessary charges and expenses in matters which in no way concern him.

35 That it appears by said bill that the complainant charges this defendant, as treasurer of the Atlantic De Laine Company, with having rendered certain statements to the defendant, Lyman B. Frieze, which were incorrent and untrue, and that such incorrect statements of accounts were rendered with intent to deceive and defraud the said Lyman B. Frieze, but does not allege and specify in what respect the said statement' of account were incorrect and untrue, or in what manner or in what respect the said Frieze was deceived and defrauded thereby, so that this defendant is unable to know what specific charges of fraud are made against him and cannot answer the same.

And, therefore, and for other good causes of demurrer in said bill con-

tained, this defendant doth demand the judgment of this honorable court, whether he shall be compelled to make any other or further answer to said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

GEO. W. CHAPIN,
By his solicitors, A. PAYNE,
R. W. GREENE.

We certify that, in our opinion, the above causes of demurrer are sufficient.

A. PAYNE.
R. W. GREENE.

I, Geo. W. Chapin, for myself and in my capacity as treasurer of the Atlantic De Laine Co., on oath declare and say, that the above demurrers filed by myself and by the Atlantic De La'ne Co. are not interposed for delay.

GEO. W. CHAPIN.

Subscribed and sworn to this 9th day of July, A. D. 1859, before me.
HENRY PITMAN,
Clerk Cir. Court R. I. District.

36

37 And at the June term, A. D. 1859, of said court, the said cause came on to be heard upon the demurrers filed therein, and was argued by counsel, and held for advisement; and, the cause being further continued to the November term, A. D. 1859, it is then ordered by the court that the demurrers be overruled; whereupon, on the 6th day of December, A. D. 1859, the following answer was filed:

Circuit court United States, Rhode Island district, *sc.*

CHARLES T. JAMES
vs.
ATLANTIC DE LAINE CO. ET ALS. } Equity.

The answer of the At'antic De Laine Co. and of George W. Chapin to the bill of complaint of Charles T. James.

These defendants, reserving all right of exception to said bill of complaint, for answer thereunto say:

That they admit that said complainant did execute a deed of assignment as alleged, and, so far as they know or believe, the same is correctly described in said bill and in the copy thereunto annexed; but for greater certainty they pray that the complainant may be required to prove the same. These defendants have no knowledge, save as informed by said bill, as to the character, amount, or situation of the property conveyed by said deed of assignment; but upon information and belief they deny that the allegations in said bill as to the amount, character, and situation of said property are true, but on the contrary aver that the actual value of the property conveyed by said deed,
38 and which passed into the hands of said assignee, did not exceed the amount of between sixty and seventy thousand dollars. These defendants admit that said assignee took possession of certain

property and estate under said deed, but whether all the estate conveyed by said deed was taken possession of by said assignee they are not informed, save by said bill, and cannot, therefore, admit or deny.

These defendants admit that a portion of said assigned property consisted of the interest of said James in the Atlantic De Laine Mills, but they wholly deny that one-half of the same was the property of said James, or that he was entitled to certificates of stock for one hundred and fifty shares of said stock, of which the par value was one hundred and fifty thousand dollars.

And these defendants admit that on the 1st day of January, A. D. 1851, the said James entered into a contract with Hill, Carpenter & Co. and Geo. W. Chapin, as attorney, aforesaid, and they admit that the copy marked "B," and annexed to said bill, is a correct copy of said contract. And these defendants admit that at and before the date of said contract the parties thereto entered into an agreement among themselves to procure an act of incorporation, under the style of the Atlantic De Laine Company, with a capital of three hundred thousand dollars, and that the stock of said company was subscribed for as stated in said bill.

And these defendants admit that immediately upon the execution of said building-contract the said James entered upon the lands purchased by said company, and constructed the buildings, and paid in upon his subscription to the stock of said corporation the sum of one hundred and thirteen thousand dollars, or thereabouts, in work and materials, under said contract, previous to the date of his assignment; but whether the said James had contracted for machinery for said mills, and whether he had become liable to pay the sum of about one hundred and eighty thousand dollars, in addition to the said sum of one hundred and thirteen thousand dollars, in the execution of said contract, these defendants have no knowledge and no means of forming a belief, and can therefore neither admit nor deny.

And these defendants admit that the act of incorporation was applied for and obtained and the company organized as stated in said bill; and they deny that the remainder of the subscribers to said capital
39 stock of said company, except said James, had not paid in any portion of said subscription previous to the date of said assignment of said James.

And these defendants admit that one of the provisions of said assignment was, that the assignee should proceed and complete said contract, and should appropriate so much of the assigned fund as should be necessary for that purpose; and that, in the execution of said trusts, the assignee proceeded with the execution of said contract, and these defendants are informed and believe, and therefore admit, that the assignee appropriated a portion of said assigned estate for that purpose; but whether the amount expended by said James and his assignee in the execution of said contract is correctly stated in said bill these defendants have no knowledge, and no means of forming a belief, and can therefore neither admit nor deny.

And these defendants admit that said mill was completed and went into operation.

And these defendants admit that said James, previous to his said assignment, obtained a loan of $75,000, and gave mortgages as security therefor, as stated in said bill; but these defendants wholly deny that the said mortgage was made by the said James; and the provisions in his said assignment, requiring his assignee to complete said contract, were inserted upon any understanding that said mortgage should not

tained, this defendant doth demand the judgment of this honorable court, whether he shall be compelled to make any other or further answer to said bill, or any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

GEO. W. CHAPIN,
By his solicitors, A. PAYNE,
R. W. GREENE.

We certify that, in our opinion, the above causes of demurrer are sufficient.

A. PAYNE.
R. W. GREENE.

I, Geo. W. Chapin, for myself and in my capacity as treasurer of the Atlantic De Laine Co., on oath declare and say, that the above demurrers filed by myself and by the Atlantic De La'ne Co. are not interposed for delay.

GEO. W. CHAPIN.

Subscribed and sworn to this 9th day of July, A. D. 1859, before me.
HENRY PITMAN,
Clerk Cir. Court R. I. District.

36

37 And at the June term, A. D. 1859, of said court, the said cause came on to be heard upon the demurrers filed therein, and was argued by counsel, and held for advisement; and, the cause being further continued to the November term, A. D. 1859, it is then ordered by the court that the demurrers be overruled; whereupon, on the 6th day of December, A. D. 1859, the following answer was filed:

Circuit court United States, Rhode Island district, *sc.*

CHARLES T. JAMES
vs.
ATLANTIC DE LAINE CO. ET ALS. } Equity.

The answer of the Atlantic De Laine Co. and of George W. Chapin to the bill of complaint of Charles T. James.

These defendants, reserving all right of exception to said bill of complaint, for answer thereunto say:

That they admit that said complainant did execute a deed of assignment as alleged, and, so far as they know or believe, the same is correctly described in said bill and in the copy thereunto annexed; but for greater certainty they pray that the complainant may be required to prove the same. These defendants have no knowledge, save as informed by said bill, as to the character, amount, or situation of the property conveyed by said deed of assignment; but upon information and belief they deny that the allegations in said bill as to the amount, character, and situation of said property are true, but on the contrary aver that the actual value of the property conveyed by said deed,
38 and which passed into the hands of said assignee, did not exceed the amount of between sixty and seventy thousand dollars. These defendants admit that said assignee took possession of certain

property and estate under said deed, but whether all the estate conveyed by said deed was taken possession of by said assignee they are not informed, save by said bill, and cannot, therefore, admit or deny.

These defendants admit that a portion of said assigned property consisted of the interest of said James in the Atlantic De Laine Mills, but they wholly deny that one-half of the same was the property of said James, or that he was entitled to certificates of stock for one hundred and fifty shares of said stock, of which the par value was one hundred and fifty thousand dollars.

And these defendants admit that on the 1st day of January, A. D. 1851, the said James entered into a contract with Hill, Carpenter & Co. and Geo. W. Chapin, as attorney, aforesaid, and they admit that the copy marked "B," and annexed to said bill, is a correct copy of said contract. And these defendants admit that at and before the date of said contract the parties thereto entered into an agreement among themselves to procure an act of incorporation, under the style of the Atlantic De Laine Company, with a capital of three hundred thousand dollars, and that the stock of said company was subscribed for as stated in said bill.

And these defendants admit that immediately upon the execution of said building-contract the said James entered upon the lands purchased by said company, and constructed the buildings, and paid in upon his subscription to the stock of said corporation the sum of one hundred and thirteen thousand dollars, or thereabouts, in work and materials, under said contract, previous to the date of his assignment; but whether the said James had contracted for machinery for said mills, and whether he had become liable to pay the sum of about one hundred and eighty thousand dollars, in addition to the said sum of one hundred and thirteen thousand dollars, in the execution of said contract, these defendants have no knowledge and no means of forming a belief, and can therefore neither admit nor deny.

And these defendants admit that the act of incorporation was applied for and obtained and the company organized as stated in said bill; and they deny that the remainder of the subscribers to said capital
39 stock of said company, except said James, had not paid in any portion of said subscription previous to the date of said assignment of said James.

And these defendants admit that one of the provisions of said assignment was, that the assignee should proceed and complete said contract, and should appropriate so much of the assigned fund as should be necessary for that purpose; and that, in the execution of said trusts, the assignee proceeded with the execution of said contract, and these defendants are informed and believe, and therefore admit, that the assignee appropriated a portion of said assigned estate for that purpose; but whether the amount expended by said James and his assignee in the execution of said contract is correctly stated in said bill these defendants have no knowledge, and no means of forming a belief, and can therefore neither admit nor deny.

And these defendants admit that said mill was completed and went into operation.

And these defendants admit that said James, previous to his said assignment, obtained a loan of $75,000, and gave mortgages as security therefor, as stated in said bill; but these defendants wholly deny that the said mortgage was made by the said James; and the provisions in his said assignment, requiring his assignee to complete said contract, were inserted upon any understanding that said mortgage should not

be enforced or foreclosed against his interest in the property of the Atlantic De Laine Company to the injury of himself and his estate, or with the assurance on the part of said Chapin, as trustee for the parties who advanced said money, and as treasurer of said corporation, that said stock should be retained and held by the said James and his assignee until the same could be disposed of to its full value; but they admit and aver that it was understood that the other property included in said mortgage should be first applied to the payment of the debts secured thereby, and that the interest of the said James in the stock of the Atlantic De Laine Company should not be resorted to until said other proper should have been exhausted, leaving a balance of said debt unpaid.

And these defendants deny that said mill was completed and said machinery furnished according to said contract; and they admit that said Atlantic De Laine Company made claims upon said James and upon his assignee, the said Frieze, for damages for the non-performance of said contract, and for certain sums of money which they claimed had been expended by them for labor and materials and machinery, which they alleged to be within the contract of said James; but these defendants deny that said claims were unwarrantable and unjust; but, on the contrary, aver that they were legal, valid, and just, and that said James and his assignee were legally liable therefor; and they admit that said Atlantic De Laine Company persisted in said claims, but deny that they ever refused to make a reasonable settlement of the same with the said James and his assignee. They admit that no settlement was made until the time and in the manner hereinafter mentioned; but they wholly deny that said settlement was delayed by any fault, neglect, or refusal on their part; and aver that the delay, neglect, and refusal, if any, was wholly on the part of the said James and his assignee.

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And these defendants deny that said James, or his assignee, made repeated attempts to obtain a settlement with the said Atlantic De Laine Co., or demanded that certificates of stock should be issued to said assignee; all which attempts were frustrated by the neglect or refusal of these defendants to render any statement of their accounts with the said James or his assignee; and they wholly deny that a want of such accounts, or of any knowledge of the state of such accounts, formed any obstacle to a settlement on the part of said James or his assignee; and they deny that said James or his assignee ever called for and were refused such accounts, or complained that the same were not furnished; and they aver that said James and his assignee had at all times a full knowledge, or means of knowledge, of the state of such accounts. But these defendants admit that, from time to time, the said James and the said Atlantic De Laine Company had conversations about a settlement, which resulted in nothing, sometimes because the propositions made by said James were such that the said Atlantic De Laine Company could not accept the same, and sometimes because the said James could not, or did not, carry out the propositions made by himself, and which the said Atlantic De Laine Company were willing to accept. These defendants do not know, except as informed by said bill, and have no means of forming a belief, and cannot state from information or belief, or otherwise, whether at any time the said James, with a view to the payment of his debts, and the settlement of all matters connected with said assignment, and obtaining a reconveyance of said assigned property, procured certain friends of his to advance a sufficient sum of money for the payment of his debts, provided they could receive the in-

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terest in the property of the said Atlantic De Laine Company which belonged to the said James's estate; but they deny that said James, either by himself or in company with any person or persons, or in any other way, called upon the treasurer of said corporation for statements of its affairs, and for a statement of its accounts with the said James and with his estate, with a view to the settlement thereof, or for any other purpose, and were refused such statements; and they deny that any such statements were refused by the said treasurer, or that said James, from any want of knowledge, or any inability to obtain knowledge, of the state of such accounts, was prevented from obtaining the amount of money, or from making the settlement which he contemplated and desired.

These defendants admit that said George W. Chapin, trustee, advertised the property of said James for sale under said mortgage, as stated in said bill; but they wholly deny that such advertisement was in violation of any understanding whatever, and aver that the same was done in the exercise of the just and lawful rights of the said Chapin, as trustee, and without the violation of any understanding or obligation on the part of said Chapin or of any of these defendants. And these defendants admit that said Frieze filed his bill in equity and his petition for injunction in aid thereof, and that thereupon an injunction was granted by the court; but whether the contents, purport, and effect of said bill, petition, and injunction are correctly stated in said bill they cannot state; and for greater certainty they pray that the said James may be required to prove the same by producing and verifying the originals or exemplified copies thereof.

And these defendants admit that the said Atlantic De Laine Compans, by their treasurer, rendered statements to the said Lyman B. Frieze, assignee of said James, of the accounts between the said James and these defendants, the Atlantic De Laine Company, and a statement of the affairs of the Atlantic De Laine Company, and they aver that the same were correct statements, and wholly deny that the said Frieze was deceived thereby, or that the same were incorrect or untrue.

And these defendants deny that thereupon, and without the
42 consent of the said James, and to his express dissent, the said Frieze entertained a proposition from these defendants, or either of them, for the settlement of said suit, which resulted in the withdrawal of the same, and the execution of mutual releases between the said James and his assignee and these defendants; but they aver that said allegation in said bill is in form and substance untrue; and they aver the truth to be, that a proposition originating with a friend of said James and said Frieze was entertained by these defendants for a full and final settlement between said James and these defendants, and which finally resulted in the execution of the mutual releases alleged and set forth in said bill. And these defendants deny that said settlement was without the knowledge and against the consent of said James, but on the contrary, from information and belief, they aver that the same was with the full knowledge and consent of said James; and they further aver that said settlement, having been made with a full knowledge of the facts on the part of said James and of his assignee, as full and accurate as they or either of them now possess, was acquiesced in without complaint on the part of said James or his assignee from the time when the same was made down to the filing of said bill; and these defendants deny that said James never in any way authorized said settlement or the execution of said conveyances by said assignee, or the acceptance of said release by him, and that he never gave his assent to the

same; and they aver that he did authorize and assent to the same, as they are informed and believe; and they deny that the same were procured to be executed on the part of said assignees and accepted by him by incorrect statements of the accounts between the said James and his said estate and these defendants, or either of them, and of the affairs of the said Atlantic De Laine Company; or that the same were made with intent to deceive and defraud the said assignee and the said James, and to obtain his shares in the capital stock of the said Atlantic De Laine Company without paying their just value therefor; and they aver that said conveyance was executed and said release executed with a full knowledge of all the facts, as well on the part of said James as of his said assignee; and that both said James and his assignee were well content to make said settlement at said time; and that by means of said settlement the said James obtained a release of a just, valid, and
43 legal claim of the said Atlantic De Laine Company against him for a very large amount, for which his said release was a wholly inadequate consideration.

And these defendants deny that any attempt was ever made to foreclose the mortgage on said stock by the sale thereof under the power contained in said mortgage, without rendering a proper statement of the affairs and condition of said corporation; and they deny any refusal to render the same when requested so to do by the said Frieze; and they deny all intent to obtain said stock at less than its fair value, to the injury of said James or of his estate in the hands of his said assignee.

And these defendants deny that the said conveyance of said stock, by said assignee, to these defendants, was utterly void and of no effect, and they deny that any fraud or deceit was practised upon said assignee by the said Atlantic De Laine Company or any officer or agent of theirs, or by said George W. Chapin. And these defendants do not know as to the allegations in said bill, that said James has been released and discharged from all debts, obligations, and liabilities then outstanding, but they are informed and believe, and from information and belief aver the fact to be, that he has not been so released and discharged, but that a large amount of said debts are now outstanding and in force against him. And they deny that the judgment recovered on certain notes in the name of said George W. Chapin, referred to in said bill, were, at the time of such settlement, the property of said Atlantic De Laine Company, or are properly to be included in any account to be taken between the said James and the said Atlantic De Laine Company. And they deny, from information belief, that all the expenses of executing said assignment and *and* all the claims directed to be paid thereon, have been paid and discharged, except the debt due to the Atlantic De Laine Company and their treasurer, as alleged in said bill; and they deny that the said James was or is entitled to have a reconveyance from his said assignee of all the estate and property remaining in his hands. And they deny that, in addition to the interest of said James in the stock of the said Atlantic De Laine Company, there is due to the said James, or his estate, from these defendants, or either of them, for work and labor and materials furnished and expended in and upon the property of the said Atlantic De Laine Company, and with their consent and authority,
44 which were not called for nor included in the contract between these defendants and the said James, as aforesaid, a large sum of money, to wit, the sum of fifty-five thousand dollars or upwards, or any other sum; and they aver that these defendants, the said Atlantic De Laine Company, at the time of said settlement, and before the same were released, had just and legal claims against the said James, to a

much greater amount than the value of the interest of the said James in said stock of said company; and they deny that the release of said extra charges could not have been procured from said assignee, except upon false and fraudulent representations as charged in said bill; but they aver that said assignee was ready and willing to make such releases upon a full knowledge of all the facts and circumstances connected with the state and condition of the said Atlantic De Laine Company, and with the accounts between the said James and the said company.

And these defendants deny all manner of unlawful combination; without this, that there is any other matter or thing in the said complainant's bill of complaint contained, material or necessary for these defendants to make answer thereunto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are willlng to aver, prove, and maintain as this honorable court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treas.* [L. S.]
GEO. W. CHAPIN.

UNITED STATES OF AMERICA.
Rhode Island District, sc:

In the city of Providence, this 6th day of December, A. D. 1859, then personally appeared the above-named Geo. W. Chapin, and in his capacity as treasurer of the Atlantic De Laine Company, duly au-
45 thorized and empowered to use the seal of said company as treasurer aforesaid, as well as for himself in his individual capacity, made oath that the statements in the foregoing answer, made by him of his own knowledge, are true, and those made upon information and belief are true, according to the best of his knowledge and belief.

Before me.

HENRY PITMAN,
Clerk Circuit Court R. I. District.

RHODE ISLAND DISTRICT, *sc:*

Circuit court of the United States.

CHARLES T. JAMES
vs.
THE ATLANTIC DE LAINE CO. ET AL. } In equity.

The replication of Charles T. James, complainant, to the answer of the Atlantic De Laine Company and George W. Chapin, defendants.

This repliant, saving and reserving unto himself all and all manner of advantage and exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto; and that the said answer of the said defendants is uncertain and untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law, to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant

is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

T. A. JENCKES,
Solicitor for Complainant.

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47 COMPLAINANT'S DEPOSITIONS.

Interrogatories to William H. Parkhurst.

Interrogatories to be propounded to William H. Parkhurst on the part of the complainants.

1. What is your name, age, residence, and occupation?
2. State whether or not you were employed by Charles T. James in the summer of 1851; and, if yea, in what capacity.
3. State whether or not at this time said James was engaged in building the Atlantic De Laine Mill; and, if yea, state how near it was completed, and if the machinery had all been put in or not, and what part of the same had been delivered, and what part, if any, were in the hands of the makers thereof.
4. State whether or not about this time said James contracted a loan to finish the said mill and pay for the labor upon it. If yea, state the amount of the same; from whom made; how the same was paid to said James; whether or not any security was given by said James for the same; and, if yea, what? State fully.
5. State how much, to your knowledge, said James had paid upon his interest in said De Laine Mill at that time.
6. If you state that a loan was made, state whether or not said James made an assignment after the same; and, if so, to whom, and what did he assign?
7. Did or not the assignee of said James continue the work upon the De Laine Mill; and, if so, for what reason and to what effect, and with what result?
8. State whether or not the assignee of said James was compelled to pay for any machinery not delivered. If yea, state for what reason and to what amount, and the effect of these payments upon the assigned property.
9. State whether or not said James made any attempts at settlement with the Atlantic De Laine Company; if yea, when, and did he or not succeed; and, if not, why not, to your knowledge?
10. State whether or not Lyman B. Frieze, assignee of said
48 James, demanded of George W. Chapin, treasurer of the Atlantic De Laine Company, the issue of any shares of stock of said De Laine Company to him as said assignee; and, if yea, why did he make such demand; for what consideration; and what was the result? If you state said demand was refused, state the reasons given therefor, and by whom.
11. State whether or not Lyman B. Frieze or Charles T. James demanded a statement of the affairs of the Atlantic De Laine Company; and, if so, when, at what times, and for what purpose or purposes.
12. If you state that it was because there were parties ready to advance the money to pay the mortgage held by said George W. Chapin and take the assigned estate, state whether or not they were hindered

and frustrated in doing so because no such statement could be obtained.

13. State whether or not, when the mill was being finished, it was customary for the employees of the De Laine Company to order work done; and, if so, how and by whom were the bills therefor paid, and what was the character of said work?

14. State what you know, if anything, in regard to materials for the De Laine Mill, and the business of said De Laine Company being ordered and charged to the account of the assignee of said James, and the times when these transactions took place. State fully and particularly.

15. State whether or not an account from George W. Chapin, as attorney, as connected with the mortgage held by him, was rendered; and, if so, when, and what balance did it show as due on said mortgage, and when and to whom?

16. State whether or not there was an account between Lyman B. Frieze, assignee of said James, and George W. Chapin, trustee, or with the De Laine Company, rendered; and, if yea, when?

17. State whether or not the property of said James was advertised and sold to pay said mortgage to said Chapin, as attorney or trustee; and, if so, when, and what property was thus advertised?

18. State what you know, if anything, in regard to the money to pay said mortgage to said Chapin having been tendered to him, and if such knowledge came to you through said Chapin, or any one from him, or in his presence.

19. What was the amount of said mortgage held by said Chapin, for the payment of which said property had been advertised for sale; and had any part of the same been paid? If yea, how much, and from what sources?

49 20. State whether or not the said Lyman B. Frieze, assignee, called personally for a statement of affairs of the De Laine Company; if yea, for what purpose; and state whether or not he received any such statement; and, if yea, how he obtained it; and give also the conversation and words of said Chapin, the place where such conversation was held, and what the purport of such statement was; state fully your recollection about it.

21. Did you, or not, have said statement in your possession; and, if so, did you show it to any one; and, if yea, to whom, and what was said in relation to it, and whether or not what was said was true of your own knowledge?

22. If you say you did have such statement in your possession, state whether any one called on you for the same; and, if so, whom, and what was his relation to said Chapin; and give the time when, and the conversation that then took place.

23. State whether or not any other statement was ever made by said Chapin to the assignee of said James, and what was finally done with the statement you had in your possession, and whether or not the said Chapin was anxious to obtain the same.

24. State whether or not an attempt was made to adjust the account held by the De Laine Company against said assignee; whether any proposition was made; and, if so, what said proposition was, and from whom the same came.

25. State the circumstances under which the same was made, the situation and circumstances of the assignee and assigned estate at the same time, and whether or not said proposition was accepted by said

assignee; and, if so, upon what representations, and for what reasons, to your knowledge.

26. State whether or not the said James agreed to this settlement, made by said assignee, or whether or not he withheld his consent and repudiated it altogether. State, fully and particularly, what he said and did about the same at that time.

27. Did you, or not, have a conversation with the said assignee after you learned he had made a settlement? If yea, give such conversation in detail, and as near as you can the words of said assignee on said occasion.

28. Do you, or not, know of a suit having been brought by said assignee to prevent the sale of the stock belonging to said James, in said De Laine Mill, and the result of it? If yea, what was said result?

50 29. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. A. JENCKES,
Solicitor for Complainants.

Cross-interrogatories.

Cross-interrogatories to be propounded to William H. Parkhurst, on the part of the defendants, the Atlantic De Laine Company and George W. Chapin.

These defendants, objecting to the interrogatories propounded to this witness, on the part of the complainant, as incompetent when calling for statements of parties other than these defendants, and as irrelevant when calling for facts not tending to prove any issue in the cause, or for the contents of written instruments or records, put the following questions in cross-examination, de bene esse:

1. If you answer the third interrogatory, please state to what precise time in the summer of A. D. 1851 your answer refers; please state how you derived your information touching the subject inquired of. If you undertake to state anything about machinery delivered and in the hands of the makers, please enumerate the machinery in the mill; state the cost of the same, of whom purchased, when and by whom paid for; state what machinery was in the hands of the makers, who were the makers, and whether the same was completed, and what was the contract price. If you speak of any cassimere-machinery, state whether the same was paid for, or to be paid for, by said James, or by the Atlantic De Laine Company.

2. Please state fully your means of information, if any you had, about the loan inquired of in the fourth interrogatory; what was done with the whole and every part of the money; to whom and every portion of it was paid, and when; state whether the books of said James

51 show what was done with the same, or any part thereof; if so, by whom and when the entries were made, and whether they were made at the time of the payment of the money; if not, how long after; produce the books of said James, and allow the commissioner to annex copies of all the entries on the same relating to said loan and its disbursement; and particularly state when and what amount of said loan were paid on account of finishing said mill, and whether for machinery,

materials, or labor, to whom paid, what vouchers were taken therefor; and produce the same, and allow the commissioner to annex copies.

3. State fully your means of information as to the subject inquired of in the fifth interrogatory; when and how payments, if any, were made by said James; whether the books of said James show the mode, amount, and time of such payments; produce the said books, and allow the commissioner to annex copies of all the entries relating to said payments; state what vouchers were taken for such payments, and produce the same, and allow the commissioner to annex copies; and if you state that such payments, or any portion of the same, were made in work and materials, please state fully and items, such work and materials, and produce the vouchers, if any, taken for the same, and allow the commissioner to annex copies.

4. Please state fully your means of information about the assigned property of said James; state fully, if you know, the nature of said property, and where the same was situated, and the amount which was realized therefor by said assignee; enumerate particularly the nature and amount and situation of each item of said property.

5. State the amount of work done upon said mill by said assignee; if in work you mean to include machinery and materials delivered in execution of the contract of said James for building said mill, state the amount and cost of such machinery and materials; state how the same were paid; if any portion was paid for out of the assigned estate, what portion; how much, and to whom, of the balance was paid by the assignee; to whom was it paid, in what manner, and who furnished the money to pay for the same.

6. State fully your means of knowledge touching the subject inquired of in the eighth interrogatory; what machinery was so paid for, who was paid for the same, and who furnished the money to pay for the same; was the said machinery ever delivered; if so, when?

52 7. If, in answer to the ninth interrogatory, you state that said James made any attempt at settlement, please state your means of information upon the subject; state precisely what it was that he attempted to settle, and with whom; state the date and place of each attempt, and the persons present, and all that was said and done by each person; and what each proposition was, and whether the same was in writing.

8. If you answer the tenth interrogatory, state whether said demand, if any, was in writing; if so, produce the same; state, if you know, and how you know, when and where the same was made. Was the answer in writing? If so, produce the same. If you state that such demand was refused, state, if you know, how much was then due from said James, or his estate, to the Atlantic De Laine Company, and to George W. Chapin, trustee; and what claims for damages were made by said company upon said James, and whether any, and if any propositions were pending for the settlement of said claims?

9. If you answer the eleventh interrogatory, state how you know that any demand was made. Was it in writing? Can you produce the same? If you say it was verbal, when was it made; where, who were present; who made it; said James or said Frieze? Of whom was it made? Were you present; and how do you know for what purpose it was made?

10. State fully your means of information touching the subject inquired of in the twelfth interrogatory; give the names of the parties ready to make such advance; how much was to be advanced. Was it more than the amount of the mortgage to George W. Chapin, trustee? If so, how much more? How do you know that they were hindered

and frustrated? What reasons, if any, and by whom were given, for not furnishing said statement? Was any application for such statement, to your knowledge, made by these parties, or any one of them, to the treasurer of the Atlantic De Laine Co.? If so, when, where, who were present, and what was said? How much was then due by said James to the Atlantic De Laine Co.? How much to George W. Chapin, trustee, and how much to other creditors?

11. State fully your means of information touching the subject inquired of in the thirteenth interrogatory; give the names of the employed; what work was ordered; for what purpose. Was it, or not, included in the contract of said James for building said mill? What bills were paid? Give the items, or annex copies of said bills; how do you know who paid the bills, who furnished the money with which they were paid, and how much was paid?

53 12. State fully your means of information touching the subject inquired of in the fourteenth interrogatory, what materials were so charged, where, by whom; if on any books produce them, and annex copies of the entries. If you produce no books showing all the items of such materials, please give all of such items, and give the names of each party who gave such orders.

13. State your means of information of the subject inquired of in fifteenth interrogatory. Where is the account? Produce and annex the same, or a copy. To whom was it rendered; at whose request? And if you know, state for what purpose, and how, when, and where you became aware of such purpose.

14. State your means of knowle*g*de of the subject inquired of in the sixteenth interrogatory. Produce or annex the account o*f* a copy; by whom was the same rendered, and to whom, and for what purpose, if you know, and state how you know.

15. State fully your means of knowledge of the subject inquired of in the eighteenth interrogatory; who made the tender, in whose behalf, and for what purpose; and in what manner, and of what account. If you state the circumstances of such tender, state what, if anything, was said by said Chapin in relation to the same at the time, and where, when, and in whose presence it took place; and if you know, or have been told by said James, state who furnished the money to make said tender.

16. If you answer the nineteenth interrogatory, please state fully what are your means of information touching the subject inquired of therein.

17. State fully your means of information touching the subject inquired of in the twentieth interrogatory; when, where, and in whose presence was any such statement made; state whether any such statement was in writing; if so, produce the same, and annex a copy, who called for the same, and when, and where, and in whose presence. Was any call made in writing? If so, produce and annex a copy. Was any reason given for making such call to your knowledge? If so, state when, by whom, and what it was.

18. State fully your means of knowledge of the subject inquired of in the twenty-first interrogatory; in whose handwriting was such statement; when did it come into your possession, and how long did

54 it remain there; where is it now? Produce and annex a copy. Where did you show it, and for what purpose? And if you state what was said, and that it was true, state how you know it was true.

19. If you answer the twenty-third interrogatory, state what said other statement related to, whether the same was verbal or in writing;

if in writing, produce the same, and annex a copy; if verbal, state when and where made, and in whose presence; and if you say that Chapin was anxious to obtain the same, state when, and whether it was before or after the settlement with the assignee of said James.

20. State fully your means of information as to the subject inquired of in the twenty-fourth interrogatory; state when, where, and by whom said attempt was made. If you say anything about a proposition, state whether the same was in writing; if so, produce and annex a copy. State if you know anything about the subject inquired of except what you have been told.

These defendants objecting to the twenty fifth interrogatory as too vague, and because it is impossible for them to know for what it seeks, or to cross-examine in relation thereto, put this cross-interrogatory, de bene esse:

21. If you answer the twenty-fifth interrogatory, state whether such representations were in writing; if so, produce and annex a copy; if verbal, state when, where, and in whose presence they were made, who made them, and whether you were present; and if you undertake to state the reasons for the acceptance, please state how you know what they were.

These defendants, objecting to the twenty-sixth interrogatory as irrelevant, put this question in cross-examination, de bene esse:

22. What are your means of information of the subject inquired of? Where was said James at the time of said settlement? When and how did he withhold his consent; and did he, to your knowledge, say or do anything in relation to the same in the presence of any member, agent, or officer of the Atlantic De Laine Company? If so, when and where, and give the name of such member, officer, or agent.

These defendants specially object to the twenty-seventh interrogatory, as calling for statements of the assignee not binding upon them.

55 23. Please state precisely when you were first in the employ of said James, or of his assignee, and how long you continued in such employment, and when you left it.

Deposition of W. H. Parkhurst.

I, W. H. PARKHURST, of the city of Providence, of lawful age, being first duly cautioned and sworn, on oath depose and say:

In answer to the first interrogatory, he saith: William H. Parkhurst; thirty-eight years of age; clerk in the Mechanics' Bank; residence in Providence, R. I.

In answer to the second interrogatory, he saith: I was, as book-keeper and clerk, employed by Charles T. James in the summer of 1851.

In answer to the third interrogatory, he saith: He was engaged in building the De Laine Mill. The mill was commenced in the winter of 1850–1851; the walls were up; the roof on; a small part of the building was ready for the machinery; by the middle of summer some of the machinery was in the building, but a large part was not delivered until the fall of 1851 and the winter of 1852. All the looms, the mules, and, I think, the cards were in the hands of the makers. Some of the woolen-

machinery was wanting. The machinery made in England was shipped, but had not arrived. The pickers and openers had not arrived, and the steam-engine was not set up.

In answer to the fourth interrogatory, he saith: In July or August, 1851, Mr. James, being in want of money to pay for labor, and to carry on the work upon the De Laine Mill, did contract a loan, the amount of which was seventy-five thousand dollars, and was made by George W. Chapin, as attorney or trustee for certain parties, and the same was paid, I think, twenty-five thousand dollars in cash, and the balance in drafts drawn by said Chapin upon certain parties. As security for the payment of said loan, a mortgage was given to the said Chapin upon Mr. James' interest in the De Laine Mill, his homestead estate, a farm in Warwick, a farm in Scituate, and sundry bonds of the Cannel-
56 ton Cotton Manufacturing Co., or Cannelton Coal Co., or both, in the State of Illinois, of the par value of some thirty thousand dollars. Upon the De Laine Mill Mr. James had paid one hundred and thirteen thousand dollars. The homestead was of the value of from thirty to forty thousand dollars; the farm in Warwick of the value of twenty thousand dollars; and the farm in Scituate was estimated at some ten thousand dollars value.

In answer to the fifth interrogatory, he saith: Said James had paid the sum of one hundred and thirteen thousand dollars on account of his share in the mill to G. W. Chapin previous to his (James') assignment, as per Chapin's drafts upon him (James) at sight, and called cash by the said Chapin in the account rendered, and charged by the said Chapin with the drafts drawn upon the other parties at six months.

In answer to the sixth interrogatory, he saith: Some month or six weeks, perhaps two months, I can't state precisely, after the loan was made, Mr. James made an assignment of all his estate to Lyman B. Frieze. Said estate consisted of his portion of the De Laine Mill, the stock of which was not issued, stocks in manufacturing companies in the States of New York, Pennsylvania, Illinois, Massachusetts. The real estate enumerated in the answer to the fourth interrogatory was also assigned.

In answer to the seventh interrogatory, he saith: The assignee of Mr. James did continue the work upon the De Laine Mill, because he was expressly so ordered in the assignment; and the effect was that a large part of the assigned estate was absorbed by this proceeding. The result was that the mill was, so far as I am informed, completely finished in all respects.

In answer to the eighth interrogatory, he saith: The assignee was compelled to pay for a large part of the machinery that was placed in the De Laine Mill, for the reason that the makers thereof had not delivered it previous to the assignment of Mr. James, and would not deliver it unless they were secured. The amount thus paid for, to William Mason & Co., was from seventy to eighty thousand dollars. That was the largest claim; but I think that some smaller claims were paid, that the machinery might be had. The effect was such that all, or nearly all, the assigned property that was not mortgaged was absorbed.

57 In answer to the ninth interrogatory, he saith: Mr. James, during the year 1852, several times met the managers of the De Laine Company, with a view to a settlement. I cannot particularly fix the dates, but I think the first time was in the early spring, and at various times during the summer and fall. He informed me that he did not succeed in effecting a settlement at either time, for the reason that things

were in such shape that no full and complete accounts were furnished as a basis for a settlement.

In answer to the tenth interrogatory, he saith: Mr. Frieze informed me that he has, as the assignee of said James, demanded of G. W. Chapin the issue to him of the number of shares of stock which he was entitled to. The reason why such demand was made was that the stock might be the basis for raising money that was needed for the finishing of the De Laine Mill contract. He also informed me that Mr. Chapin said he would consider the subject, and let him know what he would do. He afterwards informed me that Chapin had refused to issue the stock, for the reason that they were not prepared to issue any certificates, or something to that effect. Subsequently the reason given was that the De Laine Company had a demand against him, and that when that was paid he would attend to it.

In answer to the eleventh interrogatory, he saith: I was informed, both by Mr. James and Mr. Frieze, that a statement had been demanded of the affairs of the De Laine Company. I think this was in the early part of the summer of 1852. I should say that in June of that year Mr. James had with him here a gentleman who was willing and prepared to pay the mortgage held by said Chapin, and furnish money that would raise the assignment, and enable him to go on again in his business. During the latter part of the same summer Mr. James demanded a statement for the same purpose as stated above.

In answer to the twelfth interrogatory, he saith: Mr. James informed me personally that Mr. Blake—Mr. Hamlin Blake—was ready to take the mortgage up, and take the assigned estate; and that the reason why he did not do so was that no statement could be obtained.

In answer to the thirteenth interrogatory, he saith: It was customary, during the time the mill was being finished, for the employees of the De Laine Company to order work done, and the bills for the same
58 were paid, I presume, by Mr. Chapin, the treasurer of the Atlantic De Laine Company, but not until they were approved by the assignee of Mr. James. The character of the work was such as they might fancy they needed, and such as they might think fit to order at any time, without regard to any instruction from the assignee or his agent.

In answer to the fourteenth interrogatory, he saith: During the fall or winter of 1852 an account for bobbins, &c., was handed me by the clerk of Mr. Baldwin, for some three thousand or thirty-five hundred dollars, for the De Laine Mill. I asked him who ordered them. He said a part were ordered by Mr. Thorn, Mr. James' engineer—a small part, perhaps one-quarter of the whole amount—and the balance were ordered by the clerk or agent of the De Laine Company, but they were all charged in Mr. James' or Frieze's account. I made the inquiry if all these things were necessary to start the mill. His answer was, "No; there is enough of them to last ten years, with good usage." I said, "We do not propose to buy enough to last so long. How much is a liberal supply?" He said, "About one-quarter of what is charged is full enough." He also said, "That is more than we have ever sent to any mill of the same size which Gen. James has ever built." I asked him if he was willing to take the balance back, provided he could not get his pay from the De Laine Company for them. He answered, "Yes;" but would prefer to sell them if he could, or to have the money for them. I sent him to Mr. Chapin, and he came back and said Mr. Chapin would pay him if we would approve the bill. This was not done at that time, and he left the city. He came again two or three times, and finally the

De Laine Company paid for a part of the bill themselves, and charged the balance to the assignee. Bills for wool baskets were presented in the same way, only with the exception that we were to have nothing whatever to do with furnishing the cassimere department of the mill, and they were charged in that department. Bills for ladders, gas and water piping, painting, stone-cutting, labor, dry goods ordered by the employees of the De Laine Company, were presented for payment to the assignee, all of which he knew nothing of, so he informed me in many instances.

In answer to the fifteenth interrogatory, he saith: An account was rendered by George W. Chapin, as attorney or trustee, about the first of January, 1853. The balance due in cash at that time was, as
59 shown by that account, between fifty and fifty-five thousand dollars, due George W. Chapin, attorney or trustee, I am not certain which. As connected with the mortgage, I think the account was made up as cash to a certain date, but of this I am not positive.

In answer to the sixteenth interrogatory, he saith: There was an account rendered by George W. Chapin, treasurer, against Lyman B. Frieze, assignee; but I do not remember any account between George W. Chapin, trustee, and the said Frieze. This account was not rendered, I think, until some time after the other account. I am not sure as to the date.

In answer to the seventeenth interrogatory, he saith: The property of Mr. James was advertised, I think, in February, 1853, and consisted of the farm in Scituate, the mansion house, and all his interest in the De Laine Mill. It was advertised to pay said mortgage to said Chapin.

In answer to the eighteenth interrogatory, he saith: I was informed that the money had been raised to pay the mortgage, and that the same had been tendered Chapin in a certified check, and that the said Chapin refused to cancel or transfer the mortgage, although he said but a short time previous that he wanted the money. This knowledge of the tendering of the money did not come to me through the said Chapin, nor by any one in his employ; nor was it communicated in his presence.

In answer to the nineteenth interrogatory, he saith: The amount of the said mortgage held by said Chapin was originally seventy-five thousand dollars. Some twenty-five thousand dollars, or thereabouts, had been paid. This amount was received from the sale of his Warwick farm and the stock upon it, and partly from other sources. I think, from the bonds which were held as a part of the security.

In answer to the twentieth interrogatory, he saith: Mr. Frieze informed me that he had called on Mr. Chapin, personally, for a statement of the condition and affairs of the Atlantic De Laine Company, in order that the interest he held as assignee might be protected at the sale then advertised, and that he might know what the stock was actually worth. There were rumors that the company intended to buy in the stock for about the amount of the claim, or for a nominal sum. His personal application did not bring the statement. Soon after, a formal demand was made in writing, addressed to Mr. Chapin, as treas-
60 urer of the De Laine Company. This was sent him by Mr. Bourn, who was then clerk in the office, and by him deliverd to the said Chapin, or at his office. But a short time elapsed before Mr. Chapin came into our office. I was in the office with Mr. Frieze when he came in. Addressing himself to Mr. Frieze, after some general conversation, he said, in effect, I have your note asking for a statement of the affairs of the De Laine Company. To this Frieze says, "Yes, I want a statement." Mr. Chapin said, "I don't know that I can give

you anything that will be satisfactory," or something to that effect; that it would be a great deal of trouble to make out one; that they had a large quantity of goods on hand, the price of which was fluctuating, and therefore they could not fix the amount so they could make a statement up; some of the accounts were so tangled up, or mixed up they being not definitely settled, that he hardly knew how they could get at it. After Chapin left the office he returned and asked Mr. Frieze if he wished a written reply, to which Frieze said that he did not know that a written reply was necessary. "You say you can't make a statement, and I suppose we must let it stand so." After Chapin's departure I was requested to note particularly what he had said at the interview. Subsequently Mr. Frieze handed me a paper, and said, this is Mr. Chapin's statement; I have just got it. This paper was in the handwriting of Mr. Chapin, and consisted of a few general items, on a piece of paper about the size of a half-letter sheet. I think there might have been about half a dozen lines on each side of the statement, although my impression is there were not as many. No details were specified as to the cost of the property; nor anything that we could take as a basis for the affairs of the corporation with any accuracy. As near as I can now recollect, this paper showed the company largely in debt, to the amount of some four or five hundred thousand dollars; and to balance the account was a large item of sundries, to the amount of some seventy-five or eighty thousand dollars. But what those sundries were did not appear. This paper, I distinctly recollect, had the appearance of having been copied by a copying-press.

In answer to the twenty-first interrogatory, he saith: I did have the statement in my possession for some time, and I did show it to Mr. George B. Holmes, and I think Mr. Fiske also saw it. Mr. Holmes said, "Let us see, Parkhurst, about that statement. What do you think of it?" I said, "I do not know what to think of it. What
61 is your opinion, Mr. Holmes?" Said he, "This is the lamest thing, or the blindest thing, that I have ever seen. It is a regular two-faced thing; for by this paper this company have either lost eighty thousand dollars, or they have made double that sum. Look at it in any way, and I can't see it any different." As to what Mr. Holmes said, so far as I could understand it, I think it was true. How nearly correct it was I have no means of judging.

In answer to the twenty-second interrogatory, he saith: While the statement was in my possession I was called upon by George W. Monroe, who was then a clerk in the employ of Mr. Chapin. He came into the office and enquired for Mr. Frieze. I said, "He is not in. Is there anything I can do for you?" He said, "Mr. Chapin gave him a paper a day or two since, and he wants it." I asked him what kind of a paper it was. He said, "A statement, or something of that kind. Do you know anything about it?" I said, "Yes." "Do you know where it is?" asked Mr. Monroe. I replied that it was in my possession. "What does Mr. Chapin want of it?" The reply was, "Mr. Chapin wanted to correct some errors there is in it." My reply was, "Mr. Chapin has a copy of it; if he has made any errors let him make out a correct one, and we will see how the two compare. This one I cannot give up; my orders are to keep it, and give it up to no one." The time was, I think, in the month of February, 1853; before the sale of the house of Mr. James.

In answer to the twenty-third interrogatory, he saith: No other statement was ever made of the condition of affairs of the De Laine Co. to my knowledge. I had the statement for some time, and then gave it to

Mr. Frieze, who said he would give it to Chapin when he settled his account, as he seemed very anxious about it. I think that Mr. Chapin sent two or three times afterwards for it. I am quite sure I was called upon for it more than once, and Mr. Chapin called for it himself.

In answer to the twenty-fourth interrogatory, he saith: Mr. Chapin seemed anxious to have the account of the assignee closed up in some way. He came into the office about it several times. I was also so informed by Mr. Frieze, who held frequent conversations with me, and with others in my presence, in regard to the business. Finally, Mr. Frieze said he had a proposition to settle the whole thing, as he called it; that the De Laine Co. had made a proposition to call it square.

62 I understood from Mr. Frieze that this proposition came from the De Laine Co.

In answer to the twenty-fifth interrogatory, he saith: The circumstances were as follows: The De Laine Co. had an account against the assignee of some seventy thousand dollars or more, which they were very urgent to have adjusted. They were clamoring for their pay. The assignee was so situated that money to meet this claim and release the stock could not be procured; neither was he able to meet other demands that were due and becoming due. The assigned estate was all, or nearly all, exhausted, except the property held under the mortgage, and that held by the De Laine Company as security for their claim, and for which they had refused to issue the certificates of stock. After a careful survey of the case in all its bearings, Mr. Frieze said to me he had about decided to accept the proposition made him by the De Laine Co. I said, "I would not do it; but I would fight it out." Mr. Frieze replied, in substance, "The De Laine Company have an account, as rendered, which they will settle as they propose; but if we show any disposition to kick at it Chapin says they will bring in a claim for damages for non-fulfillment of contract; for defect in the motive-power, machinery, &c.; and they will make a claim which will eat up all the balance which there may be, or that we claim is, due us. We cannot get anything from them, neither stock, nor anything else; and by settling this way I shall be rid of the greatest trouble I have had during this whole business. Besides, if we take their statement, the stock is worth no more, if as much as the debt, and I think that I shall make a good trade if I settle in this way." Mr. Holmes made the same statement, in effect, as Mr. Frieze, stating that no satisfaction would be got by standing out, as they had all the advantage, and they were bound to keep it; that the best thing that could be done was to close it up; and, under these views and with these feelings, the account was finally settled according to the proposition made by the De Laine Co.

In answer to the twenty-sixth interrogatory, he saith: Mr. James was absent from Providence during the time these matters were pending, though we heard from him frequently. He was not here at the time the settlement was made, nor did he give his consent to it. I think the settlement was made before he was notified that it was contemplated.

63 I know that he telegraphed requesting that the matter might be delayed until he could return. He returned a few days after the settlement was made, and I had a conversation with him about it. He said that "If I had been here that settlement would not have taken place with my consent;" that he did not consider himself bound by it; and that, if he lived, he would rip it up at some future time. He utterly repudiated it, and appeared very decided in his expressions in regard to it.

In answer to the twenty-seventh interrogatory, he saith: I did have a

conversation with said assignee, or rather, I had several conversations with him, during the time this was pending. I was informed by him, finally, that he had agreed upon a settlement with the De Laine Co. I made the inquiry, "Have you heard from the general yet?" He said, "I have not; I expected to hear, but I have not heard. Chapin is in a hurry to have it closed up, and I have agreed to make the settlement this morning." I made the remark, "The general will not agree to it." He replied, "I can't help that; the thing is done now, and if he don't like it, or don't agree to it, he will have a chance to pitch into them by and by, if he wants to." I think these were his precise words; if not, they were to that effect.

In answer to the twenty-eighth interrogatory, he saith: I know that a suit was brought, (after the statement was rendered that was demanded,) by the assignee, to prevent the sale of James's interest in the De Laine Mill. A temporary injunction was granted, and the stock was not sold.

In answer to the twenty-ninth interrogatory, he saith: I don't know that I can.

Cross-examination:

In answer to the first cross-interrogatory, he saith: I refer to the time in the summer of 1851, from the twentieth of July, or thereabouts afterward. My information was derived from personal examination as to the amount of machinery in the De Laine Mill, and there was but a small part of the machinery in the mill; how much I do not know, but should say, none except upon the lower floor. I refer to the machinery
64 in the main building, not in the other. I do not know the cost of the same. Nearly, if not all, the machinery that was in the mill at this time was made by the Amoskeag Co., and consisted of the woolen cards, and the preparation for the filling, of the De Laine goods. I think that nearly all, if not all, of the cotton machinery was still wanting, and consisted of pickers, cards, fly-frames, mules, dressers, and looms. I do not know what the contract price for these articles was, and have no means of fixing the price. I do not recollect, at this time, how the machinery that was in the mill was paid for. Most of the machinery was built by William Mason & Co., P. Whitin & Sons, the Amoskeag Co., and Higgins & Co. I always understood that all the machinery in the L of the building was not included in the contract with Mr. James.

In answer to the second cross-interrogatory, he saith: My means of information were such as would be apparent to any person who had free access to Mr. James's books. I am not able to state what was done with that particular sum of money; nor do I know to whom each and every part of it was paid, as there was no separate cash account kept for that particular sum, that I was ever aware of. I have not access to the books of Mr. James, nor have I seen them since I was in his employ and that of his assignee; and cannot state who made the entries, nor when they were made. I have not the control of Mr. James's books, and cannot produce them; nor have I any vouchers in my possession.

In answer to the third cross-interrogatory, he saith: I found charged to the De Laine mill stock account the sum of one hundred and thirteen thousand dollars; and I also found the drafts of George W. Chapin, trustee or attorney, I cannot tell which, at sight, payable to his own order, I think, and by him regularly endorsed, upon Charles T. James for the same amount, as vouchers for the payment of that sum. I have not the drafts in my possession nor the books, nor have I any vouchers belonging to Mr. James.

In answer to the fourth cross-interrogatory, he saith: My means of knowledge of the property assigned was derived from the books and papers, together with the deed of assignment of Mr. James. The property was in bank stocks, manufacturing stocks, real estate, and other property, of which I am not able to give a schedule; nor can I say how much was realized from the sale of the various kinds of property. I have no means of information upon this point.

In answer to the fifth cross-interrogatory, he saith: I do not
65 know how much work was done in all by the assignee; but I know that to procure the machinery to finish the contract he paid William Mason & Co. more than two hundred thousand dollars in stocks from the assigned estate; that was the largest sum paid any one; other amounts were paid Thurston, Green & Co., Bancroft & Sellers, I think, and others, by the treasurer of the Atlantic De Laine Company, and charged in the assignee's account. The assignee had not much money to pay with, as the payment made Mason & Co. used up pretty much everything which was not held by the De Laine Company in some way or another.

In answer to the sixth cross-interrogatory, he saith: I know that the assignee was compelled to pay for a large part of the machinery, (as stated in my answer to the eighth direct interrogatory,) the looms and cotton-spinning part were paid for by him out of the assigned estate. The machinery was delivered in the summer, fall, and winter of 1851, and the early part of the winter of 1852.

In answer to the seventh cross-interrogatory, he saith: I was informed, both by Mr. James and Mr. Frieze, that an attempt had been made at a settlement, or some kind of an understanding as to the interest of Mr. James in the De Laine Mill; that he wanted to know the state of the affairs of the De Laine Company; that he had a large interest there, that he wished to make available in some way to pay off the mortgage held by Chapin; that he had met the directors of the company with the disposition to agree upon some terms, and that such meetings had been held at the office of Mr. Chapin, and resulted in no satisfactory arrangement. I was not present at any of these meetings, nor do I know whether any demand was made in writing or not.

In answer to the eighth cross-interrogatory, he saith: I do not know whether the demand was in writing or not, but I think not. I know by the answer I received from the said Frieze when I inquired of him about it; I also think that there was a conversation about the same thing in our office, and Chapin was then present. I understood that the company was not prepared to issue certificates, for the reason that the capital stock was not paid up by the subscribers, or by those who originally *the* were the subscribers. I do not know how much was claimed as due from James' estate to the DeLaine company, as no account had then been rendered, that I am aware of. I suppose the sum then due
66 on the mortgage was the original sum. I am not aware that any claims for damages were ever rendered or ever contemplated until a short time before the final settlement, and I think it was then talked of as an additional reason for compelling a settlement in the way it was made. I am not aware, nor was I ever informed by any one, that there was any proposition made or entertained for the settlement of these claims. I mean at the time the stock was demanded to be issued and the same was refused.

In answer to the ninth cross-interrogatory, he saith: I was informed by both said James and said Frieze that such a demand had been made; I do not know whether verbally or not. I think the first demand was

made in June, 1852—perhaps earlier. There was one or more made after this time; I am not certain as to the date. The demands were by both said James and Frieze, I think, but not at the same time. I understood that they both made the demand of Mr. Chapin, or whoever was in charge of the office of the De Laine Company. I was not present. The purpose was as I have stated in my answer to the direct interrogatory, as I understood it.

In answer to the tenth cross-interrogatory, he saith: I saw the gentleman who came here with Mr. James. I had previously heard from him, Mr. Holmes, Mr. Frieze, and Mr. Fiske, that a proposition had been made by Mr. James to raise money upon his interest, or upon the interest of his estate in the De Laine Mill, and that parties or a party had been found that was willing to furnish the amount needed; and I understood that one hundred thousand dollars could be had, provided the party could know as to the standing and affairs of the De Laine Company. I have been informed that the gentleman made application, with Mr. James, at the office of the De Laine Company, for a statement of the condition of the company, and they were told that no statement could be given them, as there was no way by which a statement could be arrived at from anything that was in the office at which application was made. I do not know whether an application was made to the treasurer or not. I do not know how much was due, or claimed to be due, from said James' estate to the De Laine Company, as no account had at that time been rendered either of the amount due upon the mortgage or upon any other claim. Nothing had at that time been done
67 with any account, nor had anything been said as to the payment of any money, more than in a very general manner, to my knowledge. I have no means of knowing how much was due the other creditors. I know that a large number of claims upon Mr. James that were due at the time of his assignment had been paid. The name of the person who was to furnish the money was Hamlin Blake.

In answer to the eleventh cross-interrogatory, he saith: My means of information came from parties who performed the work or finished the articles. Mr. George F. Wilson, clerk of the De Laine Company, ordered a large part of the work done, and purchased the articles charged. I think that Mr. Silver, the superintendent of the mill, ordered some; Mr. Chapin some, so I was informed, and others. I don't know the purpose the work was ordered for, unless it was to get all that could be got out of James' estate, and to make expense. I do not think a large part of the work and materials so ordered or done came under the contract; much of it I know did not. I don't know how the bills were paid; they were charged in the account as rendered. I have no recollection of seeing the vouchers and comparing them with the account. I can give no copies, as I have not any, nor were any taken to my knowledge; and for the same reason I do not know how much was paid.

In answer to the twelfth cross-interrogatory, he saith: My means of information came direct from the parties who furnished the articles and performed the work; bobbins and shuttles were ordered from Baldwin; ladders from Mr. Spare; water and gas piping by T. Whitaker & Son; dry goods from Spooner & Draper or Draper & Thomas; wool baskets and other fixtures for the cassimere department—who they came from I do not now recollect. These were among some of the many items. I have no books of Mr. James' in my possession. The bills were made out generally to the De Laine Company when presented; and when the question was asked, "Who gave the order?" the answer would in most cases be, Mr. Wilson, Mr. Chapin, Mr. Silver, or some one of the overseers

of the mill. When the bills were presented, the persons who brought them generally said they were sent to our office from Mr. Chapin's office, but that they had presented the bills there first.

In answer to the thirteenth cross-interrogatory, he saith: I saw
68 the account and had it in my charge. I do not know where it is. It was rendered to L. B. Frieze; at least I had it from him, I think. I do not know that anybody asked for an account at the time it was sent in. I suppose the account was sent at the time that it was sent for the purpose of forcing a settlement, as but a few days before the account was rendered Mr. Chapin was speaking of it in our office. Soon after it was rendered the calls for a settlement seemed more urgent and frequent; at least that was the impression I derived from the conversation of Chapin that I heard several times in the office. He then seemed very desirous of raising the money, said the parties wanted it, and that the mortgage must be settled some way or another.

In answer to the fourteenth cross-interrogatory, he saith: I had the account of the De Laine Company against L. B. Frieze, assignee, (or the estate of said James, I am not certain how the account was made out,) in my charge and keeping. I have no copy. The account was rendered by Mr. Chapin, I suppose, for the same purpose as the account against said James was rendered—for the purpose of forcing a settlement; both these accounts were so interwoven in the various conversations held about them that one could not be mentioned without calling up the other. I thought, from all that I saw and heard, that as the mill was nearly or quite finished, and had been running for some months, *that* the company had made up their minds that the time had come for them to take full control of it, and to do this they must get their claims in shape to compel a settlement upon their own terms. From the course that had been pursued that seemed to be the object they had in view.

In answer to the fifteenth cross-interrogatory, he saith: I was informed by the late Thomas F. Carpenter, esq., that he had tendered the money for the whole amount due upon the mortgage. I think from what he said at the time that it was upon his own behalf, and that the mortgage was to be transferred to him. The tender was made for the purpose of stopping the sale of the property advertised, and preventing a great sacrifice of the same. The tender was made by a certified check upon the Bank of North America for some fifty-one thousand dollars, or thereabouts; I do not know the precise sum. I was also informed by Gen. Carpenter that Mr. Chapin said they preferred to sell, and not take the money; that he was too late, or words to that effect. I do not
69 know who was present at the time the tender was made; I was not present. I think this was in Chapin's office. I have not been told by Mr. James who furnished the money. Gen. Carpenter said a part of it was from New York, and part was raised here. I had nothing to do with the raising of it.

In answer to the sixteenth cross-interrogatory, he saith: The account rendered by Mr. Chapin of the mortgage business contained certain credits. I had the account, as I have before stated, and I know that some of the property had been sold, and the proceeds had been applied to cancel the mortgage, as far as they would go. I know that the property was sold for that purpose.

In answer to the seventeenth cross-interrogatory, he saith: I was informed by Mr. Frieze that a verbal demand was made for a statement of the condition of the affairs of the Atlantic De Laine Company, after the interest of Mr. James had been advertised for sale under the mortgage. I saw the written demand before it was sent. The same was

sent to Mr. Chapin's office. I do not know where the statement was written, whether at his office or elsewhere. He said in my presence that he could not make a satisfactory statement. This was in our office. Mr. Frieze called for a statement. I have not the statement, nor a copy; neither have I a copy of the demand. The reason given for this call was that we might know the situation and standing of the De Laine Company; how much they owed; how much they had due them, &c.; that the interest that Mr. James' estate had in the concern should not be sacrificed. It had been intimated, also, that if nothing definite was known of the condition of the company no one would bid upon Mr. James' interest, and it would be bought by the De Laine Company at a nominal sum. These reasons were given me by the assignee during the time the property was advertised, and before the call for a statement.

In answer to the eighteenth cross-interrogatory, he saith: My means of knowledge as to the statement were ample. I had it in my possession; I saw it often; talked about it. It was given me soon after it was rendered; I think the same day. It was in the handwriting of Mr. Chapin, and I think was signed by him as a statement of the condition of the Atlantic De Laine Company. I may have had it three or four weeks, more or less, some of the time in my pocket—most of the time in the safe. I do not know where it is now. I have no copy. I showed it in the office for the purpose of getting some light upon it, as I was
70 not able to comprehend it. I have stated in my answer to the direct interrogatory what was said; and from all that I can recollect, and from what was said, the statement was double-faced, or capable of two interpretations. It was vague and unsatisfactory, and, in fact, we really knew no more about the actual state of the De Laine Company's affairs after than we did before the statement was rendered.

In answer to the nineteenth cross-interrogatory, he saith: I never saw any other statement, in writing, of the condition of the De La'ne Co. The only statement I ever saw, and that I have reason to think was ever made, was rendered after Mr. Chapin said he could not render a statement that would be satisfactory. The statement he made in writing, and the one that I had in my possession, he was very anxious, or I judged he was anxious, to obtain, as he sent his clerk for it several times, and came once or twice himself. This was before the settlement was made with the assignee, and I think before the sale.

In answer to the twentieth cross-interrogatory, he saith: My means of information came from various sources; from conversations held with Messrs. Frieze, Holmes, and others, and from conversations in my hearing and presence with Mr. Chapin and other members of the De Laine Co. The time was between the advertising of James's estate and the time of the settlement. The place, the office of said Frieze. It was also common street-rumor. I was asked about it repeatedly by various persons. I do not know whether the proposition was in writing or not; I think not. I knew as much of my own knowledge as it was possible to gain by observation, and by having the whole subject discussed in my presence several times by the parties in interest while the proposition was pending.

In answer to the twenty-first cross-interrogatory, he saith: I do not think any representations were made in writing after the statement I have before referred to. I thought that the managers of the De Laine Co. were not much given to writing in their business with Mr. James or his assignee. I heard something from one of this company, (I think Mr. Chapin,) said about a claim for damages, for non-fulfillment of contract, and for defects in the mill; and it was also stated by Mr. Chapin or Mr.

Joseph Carpenter, in my presence, that the interest of Mr. James's estate would not sell for anything, as no one would bid upon it. I do
71 distinctly recollect a conversation held with the assignee. After one of these conversations, in which he stated that he had been threatened with having his books and papers called into court by the De Laine Co., and that they should move for the appointment of a new assignee upon the ground that payments made for the machinery for the mill to Mason & Co. were not in conformity to the assignment; that they should cause him a great deal of trouble if he did not comply with their proposition for settlement. This is impressed upon my mind from the circumstance that I was particularly directed to have all my books and papers in order for examination at short notice, as I might be called to produce them in court. When I asked why he gave me such an order, he said that he had again been threatened with such a course. The reason why the settlement was finally made, I have fully answered in the answer to the twenty-fifth direct interrogatory; and the statement rendered by the De Laine Company was taken as the basis of the settlement, and the condition of the company, as therein represented, was the principal reason why the settlement was made.

In answer to the twenty-second cross-interrogatory, he saith: My means of information were derived from telegraphic managers, and letters from Mr. James himself, which I saw and read, asking that all matters connected with the De Laine Co. might be delayed till his arrival home, which would be in a few days. Mr. James was in Washington when the settlement was made, and it was made, or agreed to be made, before he knew of it. He knew that something was proposed. What the precise terms were I do not think he knew, so he informed me, as I have fully answered in my direct examination. I do not know what he did or said in the presence of any member, agent, or officer of the De Laine Co., but I do know what he said and did in my presence, as I have fully answered.

In answer to the twenty-third cross-interrogatory, he saith: I commenced work in Mr. James's office about the first of August, 1851, and I was in the employ of Mr. James and his assignee till about August first, 1853. I think the time was as nearly two years as anything.

W. H. PARKHURST.

Sworn to and subscribed before me this twenty-ninth day of September, A. D. 1860.

JOSEPH S. PITMAN,
Commissioner.

72 Commissioner's fees: Taking depositions, 83 folios, at 20 cts. each, $16.60; administering oath, 10—$16.70.
Witness' fees: Three days' attendance, $4.50; two miles, 10—$4.60.

Interrogatories to George F. Wilson.

Interrogatories to be propounded to George F. Wilson on the part of the complainants.

1. What is your name, age, residence, and occupation?
2. State whether or not you were acquainted with George W. Chapin from and during the summer of 1851 to the fall of 1853. If yea, state in what capacity he was acting during said time.
3. Were you or not engaged *and engaged* in the Atlantic De Laine Mill during the summer of 1851? If yea, state by whom you were employed, and in what capacity you were engaged.

4. If you state that you were engaged in said mill as book-keeper, state what instructions you received, if any, in regard to where the books were to be kept, and under whose direction the books for said mill-accounts were ordered.

5. Had you or not any conversation with George W. Chapin about opening the accounts of the company? If yea, state such conversation fully and particularly in your answer.

6. If you state that, in such conversation, he promised to furnish you with the data necessary to open and keep such accounts in an intelligent manner, please state whether or not he ever fulfilled said promise; state fully and particularly.

7. State, if you know, in what capacity Charles T. James was acting, in the years 1851 and 1852, in the Atlantic De Laine Company.

73 8. Did you or not have any consultations with Charles T. James in relation to the necessity of your possessing such data and information? If yea, state the substance of such consultations and said James's reply.

9. State whether or not said George W. Chapin gave any statement in relation to said accounts; and if not, why not?

10. State whether or not, from the books, you were ever able to give a correct statement of the standing of the company; and if not, why not? State particularly and fully.

11. State whether or not said James ever called on you, either alone or with any other gentleman, for the purpose of getting an account of the pecuniary affairs of the company. If yea, state whether or not you furnished it; and if not, why not? and who was such gentleman? and why was such account asked for?

12. How long were you so employed in said mill; and did you or not act in any other capacity than that of book-keeper? If yea, state what capacity and during what period.

13. If you state you also acted as agent of said company at said mill, state what degree of familiarity you had with what was being done by said James and other parties interested.

14. State whether or not, either before or after the assignment of said James, you received any orders to made memorandum of charges against said James. If yea, state by whom; what, if anything, you said in reply; and what said James said, if anything, in regard to the same.

15. State what you know of the profits or losses of the company, in the manufacture of de laines, from the opening of said mill to the spring of 1852.

16. Did or not the books, in February, 1853, show a correct statement of the affairs of the company; and if not, why not?

17 Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them; or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. A. JENCKES,
Solicitor for Complainants.

74 *Cross-interrogatories.*

Cross-interrogatories to be propounded to George F. Wilson in behalf of the defendants, George W. Chapin and the Atlantic De Laine Company.

These defendants, objecting to the questions proposed to the witness, as calling for facts immaterial and not relevant to any issue in said cause,

and specially objecting to the eighth and fourteenth interrogatories, as calling for the statements of the complainant, put the following interrogatories in cross-examination, de bene esse:

1. If you state that you were employed as book-keeper, state what books you kept, and where. Give the name and subject of each book kept by you.
2. Did the books kept by you contain any account of the capital stock of the company; of the bills payable or receivable; of the accounts at bank, or with different agents?
3. Was you not aware that a set of books was kept at the treasurer's office, in Providence, with which you had nothing to do?
4. Had you any experience in book-keeping before your employment in this company? If so, how extensive?
5. Is it or not a common thing for manufacturing corporations to keep two sets of books—one at the mill, relating to the operations of the mill, and another at the treasurer's office, showing the monetary affairs and the general condition of the company?
6. If you state in what capacity Charles T. James was acting in the year 1851–2, please state from whom and what manner you derived your information upon that subject.
7. If, in answer to the twelfth interrogatory, you state that you were employed in any other capacity than book-keeper, state precisely what it was; what it authorized and required you to do, and when and by whom were you requested to act in such capacity; and how long did you act in it?
8. If, in answer to the eleventh interrogatory, you state that Charles T. James called, please state who called with him and who were
75 present; from whom you learned the object of the call, and whether or not the fact was made known to the persons calling that the condition of the company could only be ascertained from the books at the treasurer's office in Providence.
9. If you answer the sixteenth interrogatory, please state what books you refer to, and whether they include the books at the treasurer's office in Providence.
10. If you answer the thirteenth interrogatory, please state how much of the time you were at the mill. If you mention other parties, give their names, and state how often they, or either of them, or said James, were at the mill; state whether you had any knowledge of what was done by them, or either of them, except at the mill; and state what they did there, or anywhere else, if you know; and state whether your position enabled you to have, or whether you did have, knowledge of the actual financial condition of the company.

Deposition of George F. Wilson.

I, GEORGE F. WILSON, of lawful age, being first duly sworn according to law, on oath depose and say:

1. In answer to the first interrogatory, he saith: George F. Wilson; forty-one years; Providence; manufacturer of chemicals.
2. In answer to the second interrogatory, he saith: I was well acquainted with George W. Chapin during the times mentioned. He was then acting as treasurer of the Atlantic De Laine Company.
3. In answer to the third interrogatory, he saith: I was in the employ of the Atlantic De Laine Company from the 1st of July, 1851, to the fall of 1853. I had conversations with Joseph Carpenter and other reputed

stockholders in that company respecting my engagement, but particularly with Charles T. James and George W. Chapin, by whom I was finally engaged as the book-keeper of said company.

4. In answer to the fourth interrogatory, he saith: I was informed by Mr. James and Mr. Chapin that the books of the corporation were
76 to be kept at the mill, in the office to be built for the purpose, and I made plans of and got a complete set of books made for that purpose.

5. In answer to the fifth interrogatory, he saith: I had. I called upon Mr. Chapin for such data as were necessary to enable me to open the books properly, and he promised to furnish them. He showed me the contract of the company with Mr. James; told me of the purchases of wool by Hill, Carpenter & Co., but gave me no definite account of the transactions of the company. I called upon him several times, and received his promises to furnish the facts which I required; but as they were not furnished, I spoke to Mr. James about his neglect. Mr. James replied that he would see that I had what was necessary at once. Soon afterwards I heard of Mr. James' financial troubles, and on again asking Mr. Chapin for the data he replied that they had decided to have the main books kept in town, in his office.

6. In answer to the sixth interrogatory, he saith: He did not fulfill his promise.

7. In answer to the seventh interrogatory, he saith: He was acting for himself, as the contractor with the company for building the mill, and for the company as its general agent.

8. In answer to the eig'th interrogatory, he saith: I did. Mr. James stated that he knew the books could not be opened properly without the data, and said that it must be attended to, in substance as stated in my answer to the fifth interrogatory.

9. In answer to the ninth interrogatory, he saith: He never gave me the statements he promised; why not, I cannot answer. I felt my position to be somewhat delicate, and asked him why the change was made—whether it was from any want of confidence in my ability or integrity. He said, "No;" that the company thought that all but the mill-books should be kept at his office.

10. In answer to the tenth interrogatory, he saith: I never was able, nor could one be made from the books I was permitted to keep, because of the persistent refusal of Mr. Chapin to furnish such statements of accounts as was necessary to enable me to properly open and keep the books.

11. In answer to the eleventh interrogatory, he saith: He did. He asked me several times for an account of the condition of the com-
77 pany. I did not furnish the account, because, and for the reasons already stated, I could not. He called on one occasion with Mr. A. R. Fiske and three other gentlemen, who were introduced to me. One was a Mr. Blake, of New York; one was Mr. Bancroft, I think, of Philadelphia. The name of the other I have forgotten. On this occasion Mr. James asked for an account of the condition of the company. I told him it could not be furnished from that office. He enquired how I kept the books. I answered by double entry. Mr. Blake then said he had some intention of purchasing Mr. James' interest in the company, and he wanted to know how it stood—what its assets and liabilities were. I told him he could not get that information of me.

12. In answer to the twelfth interrogatory, he saith: Nearly two and one-quarter years. Notwithstanding I was engaged as book-keeper, I was introduced to parties at the mill as the agent of the company, and

I acted in that capacity during the greater part of my stay there or with them.

13. In answer to the thirteenth interrogatory, he saith: I knew of all the details of furnishing and starting the mill, for most of the work was done under my supervision and direction.

14. In answer to the fourteenth interrogatory, he saith: I did receive such orders from Mr. Chapin and from Mr. Carpenter, both before and after the assignment of Mr. James. Mr. James objected to many of those charges at the time, but he told me to "go on and do what was necessary, and we will settle those matters by and by."

15. In answer to the fifteenth interrogatory, he saith: From what I knew of the cost of making cassimeres and de laines, in that mill, I should say that the losses of this company must have been small, unless from bad debts; of which I know nothing.

16. In answer to the sixteenth interrogatory, he saith: They did not and for the reason already stated.

17. In answer to the seventeenth interrogatory, he saith: Mr. James was desirous of doing everything required by his contract, in completing and perfecting the mill; and Mr. Chapin was anxious that everything that he thought should be done by Mr. James, and that was done by the company, should be charged to Mr. James.

78 Cross-examination:

1. In answer to the first cross-interrogatory, he saith: I kept the company's books at the mill; time or labor books; accounts of wool received and sent away; supplies used and repairs made; and in the early part of the time, a portion of the account of constructing or completing the mill; mill cash-account; cost of producing the goods, &c. I can't answer the question more fully.

2. In answer to the second cross-interrogatory, he saith: No. I think a memoranda of amount of goods and kind sent to the different agents was kept at the mill.

3. In answer to the third cross-interrogatory, he saith: There was a set of books kept at the office of the treasurer, who almost daily called upon me for items from which to make his entries in those books.

4. In answer to the fourth cross-interrogatory, he saith: I had. I kept the books of one of the largest manufacturing concerns in Worcester County, Mass., for several years. I kept books for Charles Jackson, and for the Aquidneck Co. in this State. I had taught book-keeping for several years, and had often adjusted books for others. The method of keeping books which I had devised for manufacturing concerns is now extensively used in this and the neighboring States.

5. In answer to the fifth cross-interrogatory, he saith: Not to my knowledge. Some corporations do so.

6. In answer to the sixth cross-interrogatory, he saith: From Joseph Carpenter's and George W. Chapin's explanations of the contract made with C. T. James. Mr. Carpenter was a director in the company.

7. In answer to the seventh cross-interrogatory, he saith: I had, for the greater part of the time I was employed by the company, the general mangement of these entire affairs at the mill. I bought the supplies, paid the help, made contracts for work to be done in and out of the mill, settled construction-accounts with various parties, hired houses, caused new ones to be built, old ones to be moved, started the cassimere department into operation, and, to a great extent, the de laine department, also. In short, I could not well have done more if I had owned

the mill. I did all this business at the request of Joseph Carpenter, George W. Chapin, and Charles T. James.

79 8. In answer to the eighth cross-interrogatory, he saith: A. R. Fiske, Mr. Hamlin Blake, Mr. Bancroft, and another gentleman whose name I disremember. Mr. Blake told me his object was to ascertain the condition of the company, with a view to purchasing Mr. James's interest in it. I did not tell him that the condition of the company could be ascertained at the treasurer's office, or anywhere else, because I did not know that it could be.

9. In answer to the ninth cross-interrogatory, he saith: I refer to the books kept by me at the mill.

10. In answer to the tenth cross-interrogatory, he saith: I was at the mill all the time it was possible for me to be there. Mr. James was at the mill frequently, and Mr. Chapin nearly every day. Joseph Carpenter and George W. Chapin told me that the company had loaned Mr. James seventy-five thousand dollars to enable him to go on with his business. Subsequently Mr. James made an assignment. At the request of Mr. Chapin, I examined the deed in the clerk's office. One of the requirements of the assignment was that the assignee should complete the mill according to the contract. There was a constant disagreement between the treasurer and the assignee and Mr. Fiske as to what part of the work done and the materials furnished should be charged to Mr. James's account, and I was frequently consulted by both parties upon the questions at issue, and, so far as possible, I did what was necessary, and left the question as to whom the expense was to be charged for an after consideration. Money was furnished me whenever I wanted it by the treasurer. I sometimes negotiated the discount of the treasurer's notes for him, but not often. Of the actual financial condition of the company I knew but little.

GEO. F. WILSON.

Witness's fees, one day, $1.50; two miles travel, 10—$1.60.

Sworn to and subscribed before me this eleventh day of October, A. D. 1860.

JOSEPH S. PITMAN,
Commissioner.

Commissioner's fees: 18 folios, at 20 cents each, $3.60; administering oath, 10—$3.70.

80 *Interrogatories to Nathaniel F. Potter.*

Interrogatories to be propounded to Nathaniel F. Potter on behalf of the complainant.

1. What is your name, age, residence, and occupation?

2. If you say that you are acting as treasurer of the Narragansett Brick Company, state whether or not you were acting in that capacity in the years 1851, 1852, and 1853.

3. Are you, or not, acquainted with Charles T. James? and, if yea, state whether or not he was indebted to said Narragansett Brick Company in the years above mentioned; and, if so, in what manner and to what amount.

4. State whether or not the Narragansett Brick Company obtained judgment on said indebtedness against said James, and whether execu-

tion issued on the same and was levied on any real estate belonging to said James; and, if yea, state when said levy was made, and on what property.

5. If you say it was levied on said James' equity of redemption in the Halsey Phillips farm, so called, in Scituate, and buildings and improvements thereon, please state whether or not said interest was subject to any prior mortgage; and, if yea, to whom was said mortgage made?

6. If you say said mortgage was made to George W. Chapin, as trustee, state whether or not said Chapin had received conveyances of other property as security for the payment of said mortgage-debt, and had converted a portion of said securities into money and paid any part of the claims for which said securities were given; and, if yea, what property, and what amount of the claims had been so paid.

7. If you state that a portion of the property conveyed thus to said Chapin, trustee, consisted of shares of stock in the Atlantic De Laine Company, state what portion, as near as you can.

8. State whether or not said Atlantic De Laine Company had made any statement of its affairs, or the mode in which its business was managed, or the result of the same, previous to March, 1853.

9. State whether or not said real estate, and shares in the
81 Atlantic De Laine Company, were advertised for sale by said Chapin to pay said mortgage-debt of said James; and, if so, when?

10. State whether or not you, as the treasurer of the Narragansett Brick Company, ever called upon the said Chapin and made any inquiries as to the position of the business of the Atlantic De Laine Company. If so, state what such enquiries were; the object you had in view in making them; and the replies said Chapin made on said occasion. State the conversation fully and particularly.

11. Did you, or not, as the treasurer of said Narragansett Brick Company, ever propose to said Chapin to purchase the said mortgage-debt and securities? If yea, when; and why did you not purchase the same?

12. State whether or not, as said treasurer, you ever tendered to said Chapin, as said trustee and treasurer, a sum greater than that claimed by him to be due on said mortgage-debt, and demanded a transfer of the securities held by said trustee to the Narragansett Brick Company. If yea, state when, where, for what purpose or purposes, and what said Chapin said on this occasion. State fully and particularly.

13. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. A. JENCKES,
Solicitor for Complainants.

Cross-interrogatories.

Cross-interrogatories to be propounded to Nathaniel F. Potter on the part of the respondents, the Atlantic De Laine Company and George W. Chapin.

The said respondents object to the 4th, 5th, and 6th direct interrogatories as calling for the statements of the witness about matters of which there is record and written, and therefore better, evidence.

1. If you state, in answer to the latter part of the sixth direct
82 interrogatory, that said Chapin had converted securities into

money, and paid claims, state fully and particularly your means of knowledge upon the subject; from whom and when was your information derived.

2. If, in answer to the seventh direct interrogatory, you state that any portion of the property conveyed to said Chapin consisted of shares of stock in the Atlantic De Laine Company, state what you mean by portion. Do you mean its relative value, as compared with the other property so conveyed? If so, what are your means of knowledge of such relative value; or do you mean the number of such shares? If so, what are your means of knowledge upon that subject; or do you mean the actual value of such stock? If so, what are your means of knowledge upon that subject? Do you know anything about the matters enquired of in this interrogatory; and, if so, when, where, and from whom did you get your information?

3. If you state, in answer to the eighth direct interrogatory, that the Atlantic De Laine Company had made any statement of its affairs, state your means of knowledge, when, where, and by whom, and in whose presence such statement was made; whether in writing or orally; if in writing, produce it, or state where it is; and also state, if you know, at whose request and for what purpose it was made.

4. If, in answer to the tenth direct interrogatory, you state that you made enquiries of said Chapin, state fully when, where, and in whose presence, and for what purpose, and at whose request, and whether said purpose was made known to said Chapin at the time.

5. If you state that you purposed to purchase said mortgage-debt and securities, or that you made a tender, please state the form in which said tender was made; also, state whether or not you demanded a transfer of said mortgage; if so, to whom and for what purpose, and whether you stated the purpose to the person of whom the demand was made; state who that person was. If he refused to permit such transfer, did he give any reason; and, if so, what reason?

ABRAHAM PAYNE,
Solicitor for the Respondents.

83 *Deposition of Nathaniel F. Potter.*

NATHANIEL F. POTTER, of lawful age, of the city of Providence, in the district of Rhode Island, being first duly cautioned and sworn according to law, on oath deposes and says in answer to the several interrogatories propounded to him:

1. In answer to the first interrogatory, he saith: Nathaniel F. Potter; fifty-three years; 112 High street, Providence; farmer.

2. In answer to the second interrogatory, he saith: I am not acting as treasurer of the Narragansett Brick Company, but was in 1851, 1852, and 1853.

3. In answer to the third interrogatory, he saith: I am acquainted with him. He was indebted to the Narragansett Brick Company in the year 1851 for his notes or acceptances, given for the brick used in the erection of the Atlantic De Laine Mill, to the amount of about six thousand dollars.

4. In answer to the fourth interrogatory, he saith: We did obtain it. Execution did issue upon it. It was levied on the Harley Phillips farm, as the property of said James, on the 17th of March, 1853.

5. In answer to the fifth interrogatory, he saith: It was made on said Phillips farm, and said farm was found to be subject to a mortgage to

the Atlantic De Laine Company; but in what form I do not recollect, having never seen it.

6. In answer to the sixth interrogatory, he saith: The De Laine Company had other security for the payment of their mortgage—the homestead estate of said James, on High street, and his interest in the Atlantic De Laine Mills, which I understood to consist of one undivided half of said estate, or the stock representing it; and I also understood other securities had been sold. The amount received for them I am not aware of. The homestead estate was sold under a foreclosure of said mortgage; but the price it brought I do not recollect, or the amount it netted to reduce the mortgage.

7. In answer to the seventh interrogatory, he saith: I have answered this in the last answer as fully as I can.

84 8. In answer to the eighth interrogatory, he saith: I know of none.

9. In answer to the ninth interrogatory, he saith: The Phillips farm was advertised to be sold on the 25th of February, 1853, and his interest or shares in the Atlantic De Laine Company on the following day.

10. In answer to the tenth interrogatory, he saith: I did call on said Chapin at his office to ascertain the amount due on said mortgage, for the purpose of seeing if it was best to join in the purchase of said mortgage to protect the interests of the Narragansett Brick Company, as had been suggested to me by one of the principal owners and managers of the De Laine Company. I may have talked with Mr. Chapin about the business of the company, but do not now recollect of any such conversation as is enquired of.

11. In answer to the eleventh interrogatory, he saith: I did propose to purchase said mortgage of said Chapin, as treasurer of the Narragansett Brick Company, at his office in Westminster street, and he would not sell them to me.

12. In answer to the twelfth interrogatory, he saith: I did make a tender to said Chapin on or about the 23d of February, 1853, in his office—the certified check of Thomas F. Carpenter, on the Bank of North America, for fifty-two thousand two hundred dollars, having previously ascertained this as the amount due said company, and having previously arranged with the cashier, Mr. Hudson, to give me the specie should it be required—and demanded a transfer of said mortgage to the Narragansett Brick Co. Said Chapin took the check into his hand. I at the same time offered to bring him the specie if he required it, and he stated that he was satisfied with the check as a tender, but that he could not take it and transfer the mortgage; handed me back the check with the remark that he was glad to see the gentleman command or have so much money. Mr. Brownell—Charles F. Brownell—was with me at the time the tender was made.

13. In answer to the thirteenth interrogatory, he saith: I do not.

85 Cross-examination:

1. In answer to the first cross-interrogatory, he saith: My information was derived from Lyman B. Frieze, the assignee of Charles T. James.

2. In answer to the second cross-interrogatory, he saith: I mean one-half of the whole estate of the Atlantic De Laine Company. I know nothing of its value. My means of knowledge was through Mr. Frieze, the assignee of C. T. James.

3. In answer to the third cross-interrogatory, he saith: I know of none.

4. In answer to the fourth cross-interrogatory, he saith: I have answered this in my answer to the tenth direct interrogatory. I have no recollection of making known to said Chapin any particular object in making the enquiry. I had no one with me, and do not recollect of any one being present.

5. In answer to the fifth cross-interrogatory, he saith: I have answered this, in part, in my answer to the twelfth direct interrogatory. He gave no reasons for not transferring the mortgage.

N. F. POTTER.

Witness' fees: One day, $1.50; two miles travel, 10—$1.60.

Sworn to and subscribed before me this seventh day of November, A. D. 1860. JOSEPH S. PITMAN.
Commissioner.

Commissioner's fees: Taking depositions, 10 folios, at 20 cts. each, $2.00; administering oath, 10—$2.10.

86 *Interrogatories to Hamlin Blake.*

Interrogatories to be propounded to Hamlin Blake, of Yonkers, N. Y., on the part of complainant.

1. What is your name, age, residence, and occupation?

2. Where were you located in business in June or July, 1852; and what was the name of your firm and the character of your business?

3. At or about the time specified, were you or not acquainted with Charles T. James? If yea, in what capacity was he then acting for the Atlantic De Laine Co., if any?

4. If you say he was acting in the capacity of general agent for said company, state whether or not he called on you about said time and proposed that your firm should take the selling agency of the Atlantic De Laine Company in New York.

5. State whether or not said James wished to contract a loan of you; and, if so, for what purpose or purposes; for how much; upon what security; and what were his representations as to his interest in said De Laine Company? State fully.

6. Did you or not go to said De Laine Mill and examine the property thus offered as security; and were you or not satisfied with the value of the same; and were there any other persons with you at the time you were thus looking over the property; and, if so, who?

7. State whether or not said James at that time, and in your presence, applied to any one at the mill for a statement of the accounts of the company; and, if so, to whom; and did he obtain said statement; and if not, why not? And state whether or not said person distinctly refused to give any such statement.

8. State whether or not you were prepared to advance the loan required, upon the security offered by said James.

9. State whether or not any reason was assigned for withholding said statement, and if the person to whom said James applied for said statement knew the object of such application; and, if yea, give your reasons for so stating.

87 10. State why it was important that you should have said statement before making the loan, and the effect of such refusal, if there was any refusal, upon your action. State fully.

11. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or

to either of them; or that may be material to the subject-matter of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. A. JENCKES,
Solicitor for Complainants.

Cross-interrogatories.

Cross-interrogatories to be propounded to Hamlin Blake, a witness examined on the part of the complainant, on the part of the Atlantic De Laine Company and George W. Chapin.

These defendants, objecting to the said interrogatories as irrelevant, and as calling for statements of other parties than these defendants, put the following cross-interrogatories, de bene esse:

1. From whom and in what manner did you learn the capacity in which James was acting?

2. Was not the loan to be connected with the selling agency?

3. Would you have made the loan upon the security offered unless you could thereby have secured the selling agency?

4. Did you know whether James had any control of the selling agency? If you say you know, please say how you know, and from whom.

5. Did you not ascertain at the mill that the books showing the condition of the company were not there, but were at the treasurer's office, in Providence? Did you, or any one in your presence, apply for leave to examine the books at the treasurer's office? If you say you did, or that any one in your presence did, state who said person was and to whom such application was made.

88 6. Did you propose to take a transfer of James' interest in the company as security? If so, what did you understand its value to be per share, and did you understand that by taking a transfer of his interest you would make yourself personally liable for the debts of the company, and would you have made the loan and taken the transfer as security with this risk?

7. How much were you asked to loan, and how much would you have loaned upon the security offered?

8. If you have understood that the property of the company, independent of the mill estate and machinery, was valued at four hundred and twenty-four thousand dollars, and that the amount of their debts were at least five hundred and fifty thousand dollars, and that the stockholders were individually liable for the debts of the company, would you have made a loan upon the security of stock in the company?

Deposition of Hamlin Blake.

On this first day of November, 1860, personally appeared before me Hamlin Blake, the witness named in commission, and being by me duly sworn, did depose and say, in answer to interrogatories and cross-interrogatories proposed by me, as annexed to said commission, in suit of Charles T. James vs. The Atlantic De Laine Company, and the same was reduced *in* writing by me and subscribed by him in my presence; and the instructions contained in said commission were complied with by me.

R. E. STILWELL,
U. S. Commissioner.

To the 1st interrogatory, he saith: Hamlin Blake; 43 years of age; reside at 41 Tenth street, New York City, and am out of business.

To the 2d interrogatory, he saith: At No. 11 Broad street, New York; McCall, Blake & Fairchild, and in the commission business.

To the 3d interrogatory, he saith: I was. He was not, to my knowledge, acting in any capacity for the Atlantic De Laine Company as a company.

89 To the 4th interrogatory, he saith: Having answered the third as above, this question calls for no reply.

To the 5th interrogatory, he saith: He did, as he said, for the purpose of redeeming some securities he had already pledged, and of releasing himself from embarrassment. The amount he asked for was $100,000. He offered as security a majority of the capital stock of the Atlantic De Laine Company and a second mortgage on his homestead. He stated that he owned one-half of the stock of the company, which was mortgaged to the company as collateral security; that he also controlled one share more, and if I made the loan, part of the money would be simultaneously applied to redeem the stock mortgaged to the company; and that the amount of money he asked from me would enable him to settle with his creditors, and release his estate from an assignment which he had previously made.

To the 6th interrogatory, he saith: I went to the mill with General James, and was conducted with him through the establishment by Mr. Fiske, and I was satisfied with the value of the mill and appurtenances.

To the 7th interrogatory, he saith: General James did then, in my presence, apply to the accountant, or person in charge of the counting-room, for a statement of the condition of said company, and these accounts, which the person applied to declined to give.

To the 8th interrogatory, he saith: I was.

To the 9th interrogatory, he saith: No reason was assigned. He knew the object, as General James declared it when he made the application.

To the 10th interrogatory, he saith: Because it was necessary that I should have a full knowledge of the company's affairs, before I could form a reliable opinion whether it was solvent, its capital all paid in, and unimpaired, as upon that, of course, depended the value of the stock. In the absence of such knowledge, I refused to make the loan.

To the 11th interrogatory, he saith: I know nothing more.

HAMLIN BLAKE.

90 Cross-examination:

To the 1st cross-interrogatory, he saith: So far as I know, he was acting for himself, and my knowledge was from him.

To the 2d and 3d cross-interrogatories, he saith: As the loan would give me the control of his interest, which was a majority of the stock, I considered that it would carry with it the power to control the selling agency, and was, therefore, willing to make it.

To the 4th cross-interrogatory, he saith: I do not, except so far as his interest as stockholder gave him control over it.

To the 5th cross-interrogatory, he saith: I did not, and have made no other application than the one at the mill.

To the 6th cross-interrogatory, he saith: Yes; General James stated that the par value of his interest was $150,000, exclusive of the one additional share mentioned in my direct examination, and with this advantage in the management of the concern, I would have made the loan and taken the risk.

To the 7th cross-interrogatory, he saith: $100,000.

To the 8th cross-interrogatory, he saith: If it appeared that the capital stock was all paid in and unimpaired, I would have made the loan upon the security offered by General James.

HAMLIN BLAKE.

Subscribed and sworn to before me this 1st day of November, 1860.

R. E. STILWELL,
U. S. Commissioner.

91 *Agreement to take deposition of A. R. Fiske.*

Agreed that deposition of A. R. Fiske may be taken upon interrogatories and cross-interrogatories filed with the commission with the same effect as if upon interrogatories and cross-interrogatories filed in court and commission issued, and that the time of taking testimony in said cause may be extended until April 9th, A. D. 1861.

A. PAYNE,
Solicitor for Respondents.
T. A. JENCKES,
For Comlpainants.

Interrogatories to Alfred R. Fiske.

Interrogatories on behalf of the complainant to Alfred R. Fiske.

1. What is your name, age, residence, and occupation?
2. Where did you reside in 1851, 1852, and 1853, and in what business were you then engaged?
3. If you state that you were engaged in starting the Atlantic De Laine Mill, state when that mill was started, in what condition its machinery was, and what was the quality and quantity of the product, as compared with other mills of the kind.
4. State whether the operation of said mill was successful or not, to your knowledge.
5. State whether or not you had knowledge of the contract between Charles T. James and the Atlantic De Laine Company; and if so, what knowledge you had of it, and whether or not the mill was completed and machinery was furnished in accordance with the contract.
6. Was there any complaint of the De Laine Company that the work was not done and machinery furnished as required by the contract?

92 7. Did you know of any attempts on the part of said James to effect a settlement with said Atlantic De Laine Company? If so, state what you know about such attempts, and the reason why they failed, if they did fail.

8. Were you ever present at any time when Charles T. James applied for a statement of the affairs of said company? If so, state when, where, and to whom he applied, who was with him, and what was the reply he received.
9. Did you know of any negotiations for a settlement between Lyman B. Frieze and the Atlantic De Laine Company, in February and March, 1853? If so, state all you know of such negotiations.
10. Where was Charles T. James at that time?
11. Did you say anything to L. B. Frieze about said settlement? And if so, state what it was, and where it was said.
12. Did you know of the receipt of a telegram from Charles T. James

during the pendency of said negotiations? If so, state how you know of it, and what its contents were.

13. Did said Charles T. James, to your knowledge, assent to or dissent from said settlement? State what was said and done by him about the same.

14. Do you know, or can you set forth, any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or to either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If so, set forth the same fully and at large, in your own language.

T. A. JENCKES,
Solicitor for Complainant.

Cross-interrogatories.

Cross-interrogatories on behalf of the respondents to Alfred R. Fiske.

The respondents object to the 11th and 13th direct interrogatories as incompetent, and without wa'ving the objection, puts the following cross-interrogatories de bene:

1. If you state anything that was said or done by Charles T.
93 James or yourself, state when, where, and who was present, and state all that was said by him, yourself, or the parties present; and if you refer to more than one occasion, give the time, place, and persons present, and what was said on each.

2. State whether you know of the receipt of more than one telegram from Charles T. James during the pendency of said negotiations; if so, state what you know about, and the contents of each.

3. Are you related to Charles T. James; if so, how?

A. PAYNE,
Solicitor for Respondents.

Deposition of Alfred R. Fiske.

I, ALFRED R. FISKE, of lawful age, being first duly cautioned and sworn on oath, depose and say in answer to the several interrogatories propounded by the complainant.

In answer to the first interrogatory, he saith: Alfred R. Fiske; age forty years; residence Shamokin, Northumberland County, Pennsylvania. I am at present the superintendent of Shamokin Valley of Pottsville Railroad.

In answer to the second interrogatory, he saith: In October, 1851, I came to Providence, and took charge of putting up and starting the machinery in the Atlantic De Laine Mill, in North Providence. I continued here until the latter part of 1852, at the mill, retaining charge in starting the machinery, and completing the contract work of Charles T. James. I left the mill in the fall of 1852, the latter part of that year, the precise date I do not recollect. I was engaged during the balance of 1852, and until the summer of 1853, as superintendent at the steam-engine works of Thurston, Gardner & Co. I went to Shamokin during the summer of 1853. I resided there the remainder of that year, as superintendent of that road.

In answer to the third interrogatory, he saith: The mill was started during the winter of 1851 or 1852. All the machinery was not started until the summer of 1852. It commenced in the fall of 1851. The machinery was all placed, arranged in good condition fully equal to the
requirements of the contract, and worked satisfactorily in all
94 respects. The product of the de-laine department was about one

hundred thousand yards per week, when in full operation. The quality of the goods made was equal to any of the kind in the market.

In answer to the fourth interrogatory, he saith: The operation of the mill was very satisfactory to all the parties interested, I believe. I have no recollection of any complaints in regard to the quality of the goods and the product obtained.

In answer to the fifth interrogatory, he saith: I read the contract between the De Laine Company and Charles T. James, and understood its requirements. The amount and quality of the machinery was fully equal to the requirements of the contract. The mill was complete and perfect in all its parts, and well arranged for operating the machinery specified in the contract.

In answer to the sixth interrogatory, he saith: George W. Chapin, the treasurer, did several times complain to me of the delay in the arrival and completion of some parts of the machinery. I heard no complaint in regard to the quality or arrangement of the same.

In answer to the seventh interrogatory, he saith: Charles T. James requested me several times during the year 1852 to procure from the clerk at the mill, George F. Wilson, a statement from the books, showing the cost of manufacture, product, and market value of the goods. I made the application as requested, and was informed by Mr. Wilson, that he could not furnish an accurate statement, as he had not the means to make it out. He stated that the treasurer withheld from him the necessary information for such statement, and that any report he could make would be mere guess-work, and not reliable. Mr. James stated to me that, failing to obtain such necessary information, he was unable to negotiate with parties who were willing to advance him money to aid in a settlement of claims against him, they to take his interest in the mill as security for such advances, and thereby settle any claims that the De Laine Company might have against him.

In answer to the eighth interrogatory, he saith: I was present at the office at the mill, in company with Mr. Blake, of New York, Mr. Bancroft, of Philadelphia, and Mr. James, when the latter asked Mr. Wilson, the clerk for the company, for an account of the condition of
95 the company. In reply, Mr. Wilson stated that he could not furnish such an account or statement. Mr. Blake then said he intended to purchase Mr. James' interest in the mill if the account of the affairs of the company was satisfactory to him. The party left the office without obtaining the desired information, and no sale of Mr. James' interest was made to Mr. Blake. I do not recollect the date of this application for such statement. I think it was during the summer of 1852.

In answer to the ninth interrogatory, he saith: In the latter part of February, 1853, I was told by Lyman B. Frieze that he had received a proposition from the De Laine Company, or from Mr. George W. Chapin, to settle all matters between the company and Mr. James, the substance of which was that the company should cancel all their claims against said James, provided he, Frieze, as assignee, would surrender all the stock and interest he held or Mr. James held in the mill to the Atlantic De Laine Company. Mr. Frieze stated to me that he might be compelled to do so under the circumstances, as he could get no satisfactory statement from any of the officers of the company in relation to the condition of their affairs, and was consequently unable to realize from the stock in time to prevent the company from pushing him, as assignee, for a settlement with them. I asked him if he had Mr. James' consent to such an arrangement. He replied that he had not, but that he had written Mr. James in regard to his, Frieze's, embarrassments in that

matter. Subsequently to that conversation Mr. Frieze told me that he should be obliged to give Mr. Chapin an answer at twelve o'clock that day whether he would accept the company's proposition. I asked him again if he had Mr. James' consent to settle in that way, and he replied no; that he had not heard from him. I then remarked that I would not settle the matter in that way, even if Mr. James requested me to do so, if I was in his, Frieze's, place, as I considered it no better than throwing away property. Mr. Frieze told me the evening of the same day that he had closed the arrangement, as he could see no other way to get out of the scrape with that company under the circumstances, and that Mr. James could rip the whole matter up, if he was not satisfied with it, after it was fully explained to him on his return to Providence.

In answer to the tenth interrogatory he saith: I believe he was in Washington at that time.

96 In answer to the eleventh interrogatory, he saith: My last conversation with Mr. Frieze in relation to the settlement was on the 2d of March, 1853, I think. I met him on Weybosset street, near his office. I have stated that conversation in my answer to the ninth interrogatory.

In answer to the twelfth interrogatory, he saith: I remember hearing William H. Parkhurst say that a telegraphic dispatch had been received from Mr. James in relation to the settlement of the matter with the De Laine Company, requesting Mr. Frieze to keep the matter open until he, Mr. James, could reach Providence. I have no recollection of seeing said dispatch.

In answer to the thirteenth interrogatory, he saith: I saw Mr. James on his return to Providence, after the settlement had been made by Mr. Frieze, when he told me that he was astonished to learn that his interest in the De Laine Mill had been so sacrificed, and that he was very sorry Mr. Frieze had settled the matter in such manner; and that he should never consent to let it remain so, as it was no better than throwing his property into the river. He further said that it was done without his consent or knowledge, and that he intended to have the whole matter thoroughly investigated as soon as he could reach it, as he believed his property had been squandered without benefit to his creditors or himself.

In answer to the fourteenth interrogatory, he saith: I have no recollection of anything more in relation to these matters.

Cross-examination:

In answer to the first cross-interrogatory propounded by the respondents, he saith: I have already, in my answer to the direct interrogatories, stated those matters as fully as I recollect them.

In answer to the second cross-interrogatory, he saith: I heard of but one telegram being received during that time, and I have stated already all that I know about that.

97 In answer to the third cross-interrogatory, he saith: My wife is a daughter of his.

ALFRED R. FISKE.

Witness fees: 80 miles travel, $3.00; 1 day attendance, 1.50—$4.50.

Sworn to and subscribed before me this second day of April, A. D. 1861.

JOSEPH S. PITMAN,
Commissioner.

Commissioner's fees: 15 fol., at 10 cts. ea., $3.00; 1 oath, 10—$3.10.

Interrogatories to Charles F. Brownell.

Interrogatories to be propounded to Charles F. Brownell, on *on* the part of the plaintiff.

1. What is your name, age, residence, and occupation?
2. State whether or not you were acquainted with Nathaniel F. Potter and George W. Chapin in 1853.
3. If you say you were acquainted with said persons in 1853, state whether or not you visited George W. Chapin with said Potter, and if yea, when, where, and for what purpose? State fully and particularly, and give the conversation that then took place as fully as you can.
4. State whether or not anything was said about the amount of mortgages held by said Chapin on certain property and estate of Charles T. James; and if yea, what, and upon what property? State fully and particularly.
5. State whether or not said Chapin stated in your presence the amount of said mortgages, and if yea, what was said amount?
6. State whether or not said Potter offered to pay said Chapin the amount due on said mortgages; and if yea, state what he said?

98 7. State whether or not said Potter then made a tender to said Chapin of the amount due on said mortgages, and demanded in your presence a transfer of said mortgages. State fully and particularly everything connected with this tender and demand, and, if said tender was made by certified checks, annex a copy of the same to this answer.

8. State fully the reply of said Chapin to said tender and demand, if he made any.
9. State fully said Potter's reply to the reply of said Chapin.
10. State whether or not said Potter had prepared proper instruments of transfer for said Chapin to sign and presented the same to him? And if yea, give his reply fully.
11. Did, or not, the said Chapin acknowledge the tender to be satisfactory, yet notwithstanding absolutely refused to accept the same and transfer the mortgages? If yea, give his expressed reason for his action in this regard.
12. Do you know or can you set forth any other matter or thing that may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

T. A. JENCKES,
Plaintiff's Solicitor.

Deposition of Charles F. Brownell.

Deposition of Charles F. Brownell, of Providence, who, being duly sworn, doth depose and say, in answer to the first interrogatory: My name is Charles F. Brownell; age, thirty years; residence, Providence, Rhode Island; and occupation attorney and counsellor at law.

In answer to the second interrogatory, he saith: I was acquainted with both of them in the year 1853.

In answer to the third interrogatory, he saith: I did, in the year 1853, in company with Mr. Potter, call upon Mr. George W. Chapin at Mr. Chapin's office in the city of Providence. Immediately upon my

99 return from Mr. Chapin's office, and upon the same day, I made an affidavit in which I stated, circumstantially, all that took place

at the interview between Mr. Potter and Mr. Chapin. I refer to that affidavit for a full and correct statement of that interview, and annex to this answer, and as a part of it, a true copy of that affidavit as an answer to this interrogatory. I intended at the time I made that affidavit to give a true and correct statement of the interview. I now believe it to be so; but the affair took place so long ago, that I cannot now call to mind the particulars in connection with it. (See Exhibit A, J. H. P., commissioner.)

In answer to the fourth interrogatory, he saith: For answer I refer to my answer to the preceding interrogatory.

In answer to the fifth interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the sixth interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the seventh interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the eighth interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the ninth interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the tenth interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

11. In answer to the eleventh interrogatory, he saith: For answer I refer to my answer to interrogatory number three.

In answer to the twelfth interrogatory, he saith: In my reply to interrogatory number three I have answered fully all that I can say. I know of nothing else.

CHARLES F. BROWNELL.

Sworn to and subscribed before me this sixth day of May, A. D. 1861.

JAMES H. PARSONS,
U. S. Commissioner.

100 EXHIBIT A.

Annexed to C. F. Brownell's deposition; answer to third interrogatory.

J. H. PARSONS,
U. S. Commissioner.

NARRAGANSETT BRICK CO.
vs.
GEORGE W. CHAPIN.
} Petition for injunction.

I, CHARLES F. BROWNELL, of the city and county of Providence, on oath declare that, on this 23d day of February, A. D. 1853, by request of Nathaniel F. Potter, of said city, I went with him to George W. Chapin, of said city, at his, the said Chapin's, counting-room, said Potter being desirous of conferring with said Chapin about certain mortgages which said Chapin was said to hold on certain property and estate of Charles T. James, on which, or a part of which, I was informed that said Potter held a lien by attachment, as a judgment creditor. Said Potter, after a brief preliminary conversation, enquired of said Chapin whether he intended to sell the mortgaged premises in manner as he had advertised the same. Said Chapin replied that the other side were trying to get an injunction, but if he could possibly go on with the sale he should do so. Said Potter then asked said Chapin to inform him about what amount was due on said mortgage. Said Chapin replied that he believed

the amount to be a little rising fifty-one thousand dollars, or about that sum. He also said that some time ago he gave Mr. Frieze a statement of the amount due, which statement was a correct one of the amount due at that time. Mr. Potter then said that he did not see but that they were about selling him out of house and home, and that his only way was to advance the funds and take a transfer of the mortgage for his own protection. Said Potter then told said Chapin that he was ready to pay to him whatever sum was due on said mortgages, and to take a transfer of the same, and then took from his pocket a check, of which the paper marked "A" and hereunto annexed is an exact copy, and pre-
101 sented the same to said Chapin, demanding of him a transfer of said mortgages, and informing him that he would hand him the specie if he preferred it. Said Chapin took said check, examined it, and said he was satisfied with it; that the specie was not necessary, but his instructions were to make no transfer; that if Mr. Potter wished, he would accept of the check and cancel the mortgage. Mr. Potter replied that would do him no good; that his object was to protect himself; that they were about to sell him out from house and home, and he had a right to advance the funds and take a transfer of the mortgages; that in order to do that he had collected the necessary funds, and had a proper transfer of the mortgages written for said Chapin to sign, and presented the same to him. Mr. Chapin replied, he was very glad to see he was able to get together so large an amount of money, and was sorry he could not accommodate him, but his instructions were to make no transfer of the mortgages and to do nothing but sell the premises or cancel the mortgages. He also said, if Mr. Potter would wait until to-morrow the gentlemen would be here, and he did not know what could be done, and some arrangement might be made. Mr. Potter said possibly to-morrow might be too late; that the time was so short that whatever he did he must do it to-day. Mr. Potter then retired.

CHARLES F. BROWNELL.

Subscribed and sworn to before me this twenty-third day of February, A. D. 1853.

HENRY HOWARD,
Justice of the Peace.

A.

PROVIDENCE, *Feby.* 23, 1853.

No.

BANK OF NORTH AMERICA.

Pay to Narragansett Brick Co., N. F. Potter, treasurer, or bearer, fifty-two thousand two hundred dollars.

THOS. F. CARPENTER.

$52,200.

(Endorsed on face:) Good for fifty-two thousand two hundred dollars.

H. E. HUDSON,
Cashier.

102 RESPONDENTS' DEPOSITIONS.

Interrogatories to Joseph Lea.

Interrogatories to be propounded on the part of the respondents, to Joseph Lea.

1. State your age, residence, and occupation.
2. Are you a member of, and do you hold any office in the Atlantic De Laine Co.? If so, what, and how long have you held the same?

3. State with whom the negotiations, which resulted in the loan of seventy-five thousand dollars, and the mortgage to secure the payment of the same, were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

4. State whether or not the said mortgage was made, and the provisions of said assignment, requiring the assignee to complete the contract with the Atlantic De Laine Company, were insisted upon, upon any understanding or assurance on your part; if so, upon what understanding and assurance, and in whose behalf. State fully and particularly your knowledge upon this subject, and give your means of knowledge.

5. State whether the said mill was completed and the said machinery furnished according to the contract with said James, mentioned in the bill of complaint. If you say they were not, give your knowledge and your means of knowledge upon that subject.

6. State whether or not the said Atlantic De Laine Company made any claims upon the said James and upon the said Frieze, his assignee, for anything connected with or on account of said contract. If you answer that they did, state fully and particularly the note and extent of such claims. State how and to whom the same were made, and what was said and done in relation to the same.

7. State whether the claims aforesaid were, at the time when so made, by you believed to be just and legal claims against said James and his estate, and state whether the same were made to your knowledge,
103 with any design to hinder or prevent a settlement between the said company and the said James.

8. State whether the said claims did, to your knowledge, in fact, hinder or prevent any settlement between the said company and the said James.

9. State all the facts in your knowledge and recollection, relating to any attempted settlement and reference between said company and said James, prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James or his assignee, and by yourself as treasurer of said company, in relation to such attempted settlement, if any.

10. State whether or not, to your knowledge, the said Atlantic De Laine Company ever neglected and refused to render any settlement of their accounts with the said James, or with his assignee, the said Frieze.

11. State whether or not the said James, or his said assignee, ever requested to be furnished with such accounts, to your knowledge or recollection.

12. State whether or not the said James and his said assignee had, at all times, full means of knowing the state of such accounts.

13. State whether or not the said James or his said assignee, ever to your knowledge complained that they had or could not obtain a knowledge of the state of such accounts.

14. State if you know anything in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James' interest in the property of the said Atlantic *De* Laine Company. State all that you know in relation to that subject, if anything.

15. State all the circumstances under which the mutual release between the said Atlantic De Laine Company, and the said Frieze, mentioned in said bill, were made. State who first suggested the same, and when and where. State what was done in pursuance of such sugges-

tion, and state fully and particularly all that was done in relation to the same by yourself or the said Frieze.

16. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge or assent of said James. State fully all that you know upon this subject.

17. State whether the attempt to foreclose the said mortgage
104 upon said stock, by a sale thereof, or any of the acts of the Atlantic De Laine Company, or of yourself or any of the officers of said company, in relation to said stock, or the sales thereof, was to your knowledge with the interest on your part, or on the part of the said defendant corporation, or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reasons for such attempt, so far as they are known to you.

18. State whether or not the said James since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding. State fully your knowledge upon this subject.

19. State any other matter or thing material to this case within your knowledge.

A. PAYNE,
Solicitor for Atlantic De Laine Co. and Geo. W. Chapin.

Cross-interrogatories.

The complainant objects to the 3d, 4th, 5th, 7th, 8th, 9th, 12th, 13th, 14th, 14*th*, and 17th interrogatories to Joseph Lea, as calling in whole or in part for matter irrelevant to any issue in said cause, and in part as calling for opinions and not facts, and without waiving said objections, puts the following interrogatories de bene:

1. Were you a stockholder in said Atlantic De Laine Company, from its origin till March, 1853?

2. State what amount of stock yourself or the firm to which you belonged were the owners of, and state particularly the amount and date of each payment made by you or your firm towards said stock, and whether by cash, note, or acceptance; and if by note or acceptance, state whether or not there were any renewals of such paper, and when it was finally paid.

3. State whether or not yourself or your firm ever had the
105 use of the name of the Atlantic De Laine Company, by way of accommodation on commercial paper, prior to March, 1853. If so, give a description of such paper.

4. If, in answer to the 5th direct interrogatory, you say the mill was not completed and the machinery not finished according to contract, state whether any specification of such deficiencies was ever given to said James or said Frieze in writing; if so, annex copies to your deposition.

5. If no such specifications were made out as are referred to in the last interrogatory, make out and annex such specification now.

6. State whether you had any personal interview with Chas. T. James from the 1st of January, 1853, till the 4th of March, 1853; and if so, state where such interview took place, and whether anything testified to by you in your answers to the direct interrogatories took place at such interview; and if so, what portion of that which you have so testified to.

7. What, if anything, did you have to do with the accounts of said De Laine Co.?

8. Annex copies of any accounts which you know to have been exhibited to Charles T. James or Lyman B. Frieze.

9. If, in answer to direct interrogatories 14, 15, and 16, you state that you have personal knowledge of the matters enquired of, state particularly how, when, and of whom you acquired such knowledge; and if you say that you acquired such knowledge, or any part thereof, by correspondence, annex copies of such correspondence.

10. Was said James present at any offer of his friends, as enquired of in the 14th direct interrogatory; if not, state where to your knowledge he then was.

T. A. JENCKES,
For Complainants.

106 *Deposition of Joseph Lea.*

Deposition of a witness produced, sworn, and examined on the 6th day of April, 1861, at the office of Charles F. Heaghtt, U. S. commissioner, No. 104 South 5th street, in the city of Philadelphia, in the State of Pennsylvania, by virtue of a commission issuing from the circuit court of the United States within and for the Rhode Island district, to "any United States commissioner of the city of Philadelphia, in the State of Pennsylvania" directed, for the examination of Joseph Lea, in a certain cause depending in said court wherein Charles T. James is the complainant and the Atlantic De Laine Company et al. are respondents.

JOSEPH LEA, a witness produced and sworn and examined on the part of the respondents, deposes as follows:

To the first interrogatory, he saith: I am forty-three years of age; reside in the city of Philadelphia, and am engaged in selling goods on commission.

To the 2d interrogatory, he saith: I am not now, and have not been for about two years past, interested as a stockholder, or a member, of the Atlantic De Laine Company. Prior to that time I had been a director in said company from the period of its first organization. I do not hold any office in the company.

To the 3d interrogatory, he saith: The loan of seventy-five thousand dollars was negotiated by Charles T. James, in his own behalf, with Messrs. Josiah Chapin, George W. Chapin, Joseph Carpenter, Edwin Hoyt, and myself, representing the interest of several firms, stockholders. Charles T. James was under contract to build and equip a mill for the Atlantic De Laine Company, had subscribed for one-half of the stock therein, had made some progress in the erection of the mill and in supplying the machinery, when, about the 29th or 30th of July, 1851, he was protested at bank and became financially embarrassed, and asked a loan of seventy-five thousand dollars, on mortgage of real and personal property, to enable him to complete the contract without delay, and meet his obligations punctually.

107 The very strongest assurances were given by him that this loan would be entirely sufficient for these purposes. He told me and my associates that this loan would be sufficient to carry him through, and enable him to finish and complete the mill. I was summoned to Providence to consult with the gentlemen referred to, and agreed to unite with them in making said loan, and to appoint George

W. Chapin trustee, under the mortgages, to hold the mortgaged property. I had every opportunity of knowing the conditions of said mortgage. No other conditions were ever agreed to, to my knowledge, beyond those expressed in the mortgages. The property was pledged without any reservation whatever, and I am most positive the loan would not have been made on any other terms. So confident was Charles T. James of his ability to perform his part of the agreement that he had a clause inserted authorizing the trustee to allow him (Charles T. James) to pay off the mortgage before maturity. I never would have consented to hold any portion of the property on any other terms than those specified in the mortgage, nor did I ever hear James ask or stipulate that any portion of the property should be otherwise held. [Nor did he say anything indicating that further stipulations would be necessary or desirable on his part. After the mortgage and loan had been substantially agreed upon, James, for the first time to my knowledge, desired that a clause be inserted giving him six months' delay in case of default of payment at maturity. This was acceded to, and the mortgage was then executed as agreed upon. The proposition to hold any portion of the security for any specified price, to my knowledge was never proposed to, or entertained by, any of the parties. James's assurances that such loan would relieve him from all his embarrassments and enable him to promptly fulfil his contract and complete the mill, and his readiness to pledge his property induced me to believe him, and the loan was made with a full understanding by the parties concerned, that the fund so provided would mostly be disbursed for machinery to complete the Atlantic Mill, and thus add to the value of the security pledged under the mortgage; and the most positive promises were made by James, that if we would grant him such assistance the money should be so applied, and the contract for the completion of the mill complied with. The money was then advanced.

To the 4th interrogatory, he saith: The said mortgage was
108 made. With reference to James's assignment, I have no personal knowledge. I know that the provisions of the assignment requiring the assignee to complete the contract with the Atlantic De Laine Company were insisted upon without any further understanding or assurance on my part, and I do not know of any such understanding or assurance being given.

To the 5th interrogatory, he saith: The said mill was not completed, and the said machinery was not furnished, according to the said contract. To my great disappointment and regret, James again suspended payment, and made an assignment of his property a short time after he obtained the loan of seventy-five thousand dollars, the mill being far from complete, and the machinery destined therefor being withheld by William Mason & Company, while a heavy stock of wool, purchased at James's earnest solicitation, amounting to about 600,000 pounds, or more, was accumulating on our hands; and it was of great importance to work it up, to stop the loss of interest, depreciation, and sacrifice by forced sales. The company was subjected to great delay in the delivery of the machinery, and the means of the assignee were soon exhausted, and the company was compelled to advance him further large sums of money to enable him to complete the mill.

To the 6th interrogatory, he saith: The said company did make such a claim upon the said James and his assignee; and the fact that such a claim existed was well known to James and his assignee. The said claim was made upon the assignee by the treasurer. It was frequently discussed by the stockholders in their open meetings. I estimated the

claim at fifty thousand dollars, and believe the directors generally considered that a fair estimate, though some may have been higher.

To the 7th interrogatory, he saith: I never doubted the justice or legality of such claims, and to my knowledge they were not made with any design to hinder or prevent a settlement with said James or his assignee.

To the 8th interrogatory, he saith: The said claims, to my knowledge, did not, in fact, hinder or prevent any settlement between the said company and the said James.

To the 9th interrogatory, he saith: Some time during the winter
109 of 1852–1853, James made a proposition for settlement, and the release of the mortgage; but as part of the pay was to be in his notes, without security, it was not accepted, but declined. We met in New York for the purpose of effecting a settlement, if possible, but without success.

To the 10th interrogatory, he saith: The said Atlantic De Laine Company never, to my knowledge, neglected or refused to render any settlement of the accounts with said James, or with his assignee; and they, neither James or his assignee, ever reported to me any difficulty in obtaining their accounts.

To the 11th interrogatory, he saith: I have no knowledge of any such request; nor do I recollect of any such request.

To the 12th interrogatory, he saith: To my knowledge, the said James and his said assignee had at all times full means of knowing the state of such accounts. James was a director, I think, for two years, and was duly summoned to attend the meetings of the board.

To the 13th interrogatory, he saith: Neither the said James or his assignee ever, to my knowledge, complained that they had not, or could not obtain a knowledge of the state of such accounts.

To the 14th interrogatory, he saith: I never heard of any offer by James's friends to advance a sufficient sum for the payment of his debts provided they could receive his, the said James's, interest in the property of said Atlantic De Laine Company.

To the 15th interrogatory, he saith: I have no personal knowledge as to who first suggested the mutual release between the assignee and the company. Such mutual release was made, and I approved it, because I considered the prospect hopeless of our ever getting pay for damage, or of James ever being able to raise the money to pay off his debts; and all were desirous of settling our accounts, and ascertaining our position. At that time, the directors would have gladly sold James's stock and the whole concern for vastly less than it had cost them; as in April, 1853, the Atlantic Company authorized me to sell the entire property for a sum which would barely pay their debts, making the entire stock an almost total loss; at which time, both Mr. George W. Chapin, Mr. Carpenter, and myself considered the stock about worthless. The
110 settlement was very advantageous to said James, and would not have been made if he had been solvent.

To the 16th interrogatory, he saith: I have no knowledge that said settlement and releases were executed with the knowledge or assent of said James. I never considered his assent necessary, considering that his assignee had full authority.

To the 17th interrogatory, he saith: No obstacle was offered, or designed or proposed, by the said company, or myself, or any other of its officers, or any one else, to my knowled'e, to deter parties from bidding on the stock; nor was there any design to obtain said stock at less than the full value thereof. The object for selling said stock was, to close up

the trusteeship and mortgage account. One of the original mortgagees had deceased, and it was important to his estate and all interested to have a settlement. The said stock, since said settlement, at no time would have sold for what it cost the company.

To the 18th interrogatory, he saith: I know nothing of the matters enquired of in this interrogatory.

To the 19th interrogatory, he saith: I never was a party to any promise or agreement that the stock of James should be held under the mortgage until its full value could be realized for his benefit. Nor have I ever heard of any such pledge or promise having been made to him by any other person whatever. I was present at several important negotiations with James, and also with Mr. L. B. Frieze, his assignee, but never heard it alleged by either of them, or by any member of the Atlantic De Laine Company, that they (the company) had agreed to hold James's stock on any terms whatever, other than those expressed in the mortgage deed. And the recent allegation of such agreement has occasioned me great surprise. No such agreement could have been made without my knowledge and consent, and that of all the other directors of said company.

JOS. LEA.

CHAS. F. HEAGHT,
U. S. Commissioner.

111 Cross-examination:

To the first cross-interrogatory, he saith: I was a stockholder in said company from its origin till March, 1853.

To the second cross-interrogatory, he saith: The late firm of Hacker, Lea & Co., of which I was a member, owned twenty-five shares of stock in said company. I cannot state particularly the amount and date of each payment, as the installments called in were mostly drawn for at six months, and the acceptances were paid at maturity. There were never any renewals of such acceptances for Hacker, Lea & Co. The whole amount was paid up at maturity.

To the third cross-interrogatory, he saith: Neither myself or our firm ever had the use of the name of said company by way of accommodation, on commercial paper, prior to March, 1853.

To the fourth cross-interrogatory, he saith: I do not know of any such written specification of deficiencies referred to being given to said James or said Frieze, but I do know that said assignee was aware of such deficiency, and was instrumental in having such machinery furnished.

To the fifth cross interrogatory, he saith: I have not the means of furnishing such specification, but know that indispensable portions of the machinery were withheld by Mason & Co., which rendered much that had been delivered useless.

To the sixth cross-interrogatory, he saith: I had a personal interview with said Charles T. James between the times specified. I believe it was in New York. I have no recollection of anything else occurring at said interview than as I have stated in my answer to the ninth direct interrogatory.

To the seventh cross-interrogatory, he saith: I had nothing to do with keeping the accounts of the company. They were kept by the treasurer, Mr. Geo. W. Chapin.

To the eighth cross-interrogatory, he saith: I have no such accounts as referred to in this interrogatory, their transactions being directly with the treasurer.

112 To the ninth cross-interrogatory, he saith: In my answer to the

14th, 15th, and 16th direct interrogatories, I have stated my knowledge and my means of knowledge. I did not acquire any part thereof by correspondence that I now remember.

To the tenth cross-interrogatory, he saith: I know nothing of any such offer as enquired about. I never heard of such a thing.

JOS. LEA.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Philadelphia, this 6th day of April, 1861, before

CHAS. F. HEAGHT,
U. S. Commissioner.

Interrogatories to Josiah Chapin.

Interrogatories to be propounded on the part of the respondents to Josiah Chapin:

1. State your age, residence, and occupation.

2. Are you a member, or do you hold any office in the Atlantic De Laine Co.; if so, what, and how long have you held the same?

3. State with whom the negotiations, which resulted in the loan of seventy-five thousand dollars, and the mortgage to secure the payment of the same, were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

4. State whether or not the said mortgage was made, and the provisions in said assignment requiring the assignee to complete the contract with the Atlantic De Laine Co. were insisted upon, upon any understanding or assurance on your part; if so, upon what understanding or assurance, and in whose behalf? State fully and particularly your knowledge upon the subject, and give your means of knowledge.

5. State whether the said mill was completed and the said machinery furnished according to the contract with said James mentioned in the bill of complaint. If you say they were not, give your knowledge and your means of knowledge upon that subject.

113 6. State whether or not the said Atlantic De Laine Co. made any claim upon the said James, and upon the said Frieze, his assignee, for anything connected with, or on account of, said contract. If you answer that they did, state fully and particularly the note and extent of such claim. State how and to whom the same were made, and what was said and done in relation to the same.

7. State whether the claims aforesaid, at the time when so made, were by you believed to be just and legal claims against said James and his estate; and state whether the same were made, to your knowledge, with any design to hinder or prevent a settlement between the said company and the said James.

8. State whether the said claims did, to your knowledge, in fact hinder or prevent a settlement between the said company and the said James.

9. State all the facts in your knowledge and recollection relating to any attempted settlement or reference between said company and said James prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James or his assignee, and by yourself as treasurer of said company, in relation to such attempted settlement, if any.

10. State whether or not, to your knowledge, the said Atlantic De Laine Co. ever neglected and refused to render any settlement of their accounts with the said James, or with his assignee, the said Frieze.

11. State whether or not the said James, or his said assignee, ever requested to be furnished with such accounts, to your knowledge and recollection.

12. State whether or not the said James and his said assignee had, at all times, full means of knowing the state of such accounts.

13. State whether or not the said James, or his said assignee, ever to your knowledge complained that they had or could not obtain a knowledge of the state of such accounts.

14. State if you know anything in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James', interest in the property of the said Atlantic De Laine Co. State all that you know in relation to that subject, if anything.

114 15. State all the circumstances under which the mutual release between the said Atlantic De Laine Co. and the said Frieze, mentioned in said bill, were made. State who first suggested the same, and when and where. State what was done in pursuance of such suggestion, and state fully and particularly all that was done in relation to the same, by yourself or the said Frieze.

16. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge and assent of said James. State fully all that you know upon this subject.

17. State whether the attempt to foreclose the said mortgage upon said stock by a sale thereof, or any of the acts of the Atlantic De Laine Co., or of yourself, or any of the officers of said company, in relation to said stock, or the sale thereof, was to your knowledge, with the intent on your part, or on the part of said defendant's corporation, or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reasons for such attempt, so far as they are known to you.

18. State whether or not the said James, since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding. State fully your knowledge on this subject.

19. State any other matter or thing material to this case within your knowledge.

A. PAYNE,
Solicitor for Atlantic De Laine Co. and George W. Chapin.

Cross-interrogatories.

The complainant objects to the 3, 4, 5, 7, 8, 9, 12, 13, 14, 15, 17 interrogatories to Josiah Chapin, as calling in whole or in part for matter irrelevant to any issue in said cause, and in part as calling for opinions and not facts, and without waiving said objections, puts the following interrogatories de bene:

1. Were you a stockholder in said Atlantic De Laine Company from its origin till March, 1833?

115 2. State what amount of stock yourself, or the firm to which you belonged, were the owners of, and state particularly the amount and date of each payment made by you or your firm towards said stock, and whether by cash, note, or acceptance; and if by note or acceptance, state whether or not there were any renewals of such papers, and where it was finally paid.

3. State whether or not yourself or your firm ever had the use of the

name of the Atlantic De Laine Co., by way of accommodation, on commercial paper prior to March, 1853; if so, give a description of such paper.

4. If, in answer to fifth direct interrogatory, you say the mill was not completed and the machinery not furnished according to contract, state whether any specification of such deficiencies was ever given to said James or to said Frieze in writing; if so, annex copies to your deposition.

5. If no such specifications were made out as are referred to in the last interrogatory, make out and annex such specifications now.

6. State whether you had any personal interview with Chas. T. James from the 1st of January, 1853, till the 4th of March, 1853; and if so, state where such interview took place, and whether anything testified to by you in your answers to the direct interrogatories took place at such interview; and if so, what portion of that which you have so testified to.

7. What, if anything, did you have to do with the accounts of said De Laine Company?

8. Annex copies of any accounts which you know to have been exhibited to Chas. T. James or Lyman B. Frieze.

9. If, in answer to direct interrogatories 14, 15, and 16, you state that you had personal knowledge of the matters inquired of, state particularly how, when, and of whom you acquired such knowledge; and if you say that you acquired such knowledge, or any part thereof, by correspondence, annex copies of such correspondence.

10. Was said James present at any offer of his friends as inquired of in the 14th interrogatory? If not, state where, to your knowledge, he then was.

T. A. JENCKES,
For Complainant.

116 *Deposition of Josiah Chapin.*

I, JOSIAH CHAPIN, being duly affirmed according to law, on solemn affirmation depose and say, in answer to the several interrogatories propounded to me on behalf of the respondents:

In answer to the 1st interrogatory, he saith: My age is 72; residence, Providence; my occupation was formerly a merchant. I have now retired from business.

In answer to the 2d interrogatory, he saith: The Globe Printing Company are stockholders, and I am a member of that company. I am president of the Atlantic De Laine Company, and have been from the time of the organization of the corporation to the present time.

In answer to the 3d interrogatory, he saith: The negotiations for the loan to Gen. James of seventy-five thousand dollars, in the fall of 1851, was conducted by Messrs. Hoyt, Lea, Carpenter, George W. Chapin, and myself, on the part of the company. We were informed by General James that he could not, without a loan of seventy-five thousand dollars, go on to complete his contract, and if so made to him he would apply a large part of it to that purpose.

In answer to the 4th interrogatory, he saith: The loan was made to him as he requested. Gen. James made several mortgages to secure the payment of the seventy-five thousand dollars to the parties loaning the money, or their trustee. General James said, at the time the loan was made him, that, in case of his failure, the Atlantic De Laine Company should be protected, as was done in his assignment. I understood that the assignment of Gen. James provided for and required the as-

signee to complete the contract with the Atlantic De Laine Company, and, among other parties, I think, from Mr. Frieze. There was not any understanding or assurance ever given, to my knowledge, to Gen. James, by me or any one of the stockholders, in connection with said mortgages or his assignment.

In answer to the 5th interrogatory, he saith: The Atlantic De Laine mill and machinery, contracted for by Gen. James, was not com-
117 pleted according to contract by Gen. James, and not ready for operation for a long time after the time named in the contract had expired. I was frequently at the mill, and derived my knowledge from that source, as well as from other means; and the loss to the company was very great in consequence of Gen. James not completing his contract as agreed with the company, which was August 1st, 1851.

In answer to the 6th interrogatory, he saith: The subject of the claim for damages on Gen. James was the subject of frequent conversation with the directors; but I cannot say whether any direct claim was made in writing on James or his assignee, until a statement of the company books was furnished Frieze, in February, 1853. I have no doubt they were conversant of such claim before.

In answer to the 7th interrogatory, he saith: I never had a doubt that the claims on Gen. James, made by the company, were just and legal claims on him and his estate. They were not made with any design to hinder or prevent a settlement.

In answer to the 8th interrogatory, he saith: The claims of the Atlantic De Laine Company made on Gen. James, did not, to my knowledge, hinder or prevent a settlement between Gen. James, or his assignee, and the company.

In answer to the 9th interrogatory, he saith: I know the directors were desirous to make a settlement with Gen. James, and with his assignee; and Gen. James made a proposition for a settlement in 1852, and met some of the directors in New York several times. I was not present at those meetings.

In answer to the 10th interrogatory, he saith: The Atlantic De Laine Company never, to my knowledge, refused or neglected to render any statement of their accounts with Gen. James, or his assignee, Mr. Frieze.

In answer to the 11th interrogatory, he saith: Gen James, or his assignee, never, to my knowledge, requested to be furnished with their accounts with the Atlantic De Laine Company, unless it was at the time the final settlement was made with Mr. Frieze, when they were furnished.

In answer to the 12th interrogatory, he saith: I have good reason for the belief that they had access, or means of knowing the state of their accounts with the Atlantic De Laine Company, at all times.

118 In answer to the 13th interrogatory, he saith: They never did; and if they had, I should have seen that their request was complied with, as far as it was in my power to do so.

In answer to the 14th interrogatory, he saith: I do not recollect hearing or knowing of any person or persons offering, on any conditions, to pay Gen. James' debts.

In answer to the 15th interrogatory, he saith: George B. Holmes called at George W. Chapin's counting-room, at or near the time of settlement, and I believe proposed that an effort be made for settlement between the Atlantic De Laine Company and Lyman B. Frieze, assignee of Gen. James. He appeared to be acting under advice of Gen. James, and as the adviser of Mr. Frieze, as assignee. I then and still believe that he, Holmes, and the assignee, one or both, were directed by Gen. James in regard to the proposed settlement, from their course pursued by them.

Who first made the proposal, which finally resulted in the settlement, I am unable to call to mind. The amount due from General James's estate to the Atlantic De Laine Company and the trustee, was about eighty-five thousand dollars, in addition to the claim for damages, and was believed by the directors to be greatly more than the value of Gen. James's stock in the company, and they refused to settle with Gen. James's assignee upon the terms proposed; that is, for his stock the amount of James's indebtedness. Whether there was any value to the stock at the time was uncertain. After learning that we had nothing to expect from the assignee, though we, the company, were preferred creditors in the first class, if we did not accept the proposal, and a dark prospect in future from Gen. James, I urged the directors to settle the business, though no one could think more unfavorably as to the worth of the stock than myself. The directors reconsidered their decision and accepted the proposal, and thereupon executed mutual releases between the Atlantic De Laine Company and Lyman B. Frieze, assignee of Charles T. James.

In answer to the 16th interrogatory, he saith: I did at the time, and do now believe, that the settlement was made with and by General James's knowledge and approval.

In answer to the 17th interrogatory, he saith: The Atlantic De Laine Company did no act, nor did any of its officers, to deter others
119 from becoming purchasers, to my knowledge, but did all they could honestly to induce others to become the purchasers; as I have good reason to know, they already held more stock than they wished to hold, and were not purchasers but sellers; and the company greatly needed available means to meet their indebtedness, which was much too large for the amount of paid-up capital.

In answer to the 18th interrogatory, he saith: I suppose he has judgments of courts still against him, for which he is liable in law.

In answer to the 19th interrogatory, he saith: The very strong fears of the directors of the little worth of the stock of the Atlantic De Laine Company at the time the proposed compromise-settlement with General James's assignee was before them was more than realized. One of the firms that were stockholders were determined to be clear of their individual responsibility for the debts of the company, if possible. They offered the company their stock without consideration, (giving it to them;) but as they were persons of wealth, the company refused to accept their offer. Then they came forward and offered, not only to the company their stock, but to pay the company five hundred dollars per share in addition to the gift of their stock, and, under the circumstances, the company accepted their offer, and immediately a much larger stockholder made a like offer, which was declined at once.

Cross-examination:

And in answer to the several cross-interrogatories proposed by the complainant, he deposes as follows:

In answer to the first cross-interrogatory, he saith: The Globe Printing Co. was a stockholder in the Atlantic De Laine Co., and I was, during that time, and am, a member of the Globe Printing Co. There was no stock in the Atlantic De Laine Co. standing in my name.

In answer to the second cross-interrogatory, he saith: The Globe Printing Co. were, and are still, the owner of twenty-five shares up to that time. The stock of the Globe Printing Co. in the Atlantic De Laine Co. was paid for in money and drafts of George W. Chapin, at-
120 torney, on them as his wants required, and paid at maturity. I annex a statement of the amount and time of each payment,

marked "O." No renewals ever made us by the Atlantic De Laine Company.

In answer to the third cross-interrogatory, he saith: Never at any time, before or after March, 1853.

In answer to fourth cross-interrogatory, he saith: I am not able to say whether any specifications of deficiencies were given to either of them or not.

In answer to the fifth cross-interrogatory, he saith: The mill was to have been ready for occupation by August 1st, 1851. The building was completed about that time, but the great bulk of the machinery was not delivered until about the middle of October, 1851, and was not placed so as that the mill could operate until about the 1st of December. This is all the specifications I can make from my own knowledge. The books and accounts will show the details.

In answer to the sixth cross-interrogatory, he saith: I am not able to call to mind any interviews with Gen. James between those dates.

In answer to the seventh cross-interrogatory, he saith: I am not the book-keeper of the Atlantic De Laine Co. Of course I have had no charge of the books and accounts, and had nothing to do with them.

In answer to the eighth cross-interrogatory, he saith: I cannot do it. I don't know anything about it.

In answer to the ninth cross-interrogatory, he saith: My knowledge was personal, and not by correspondence. I cannot give the time. I acquired the knowledge of those matters from the parties stated in my answers to those interrogatories, to which answer I now refer.

In answer to the tenth cross-interrogatory, he saith: Not knowing that such an offer was ever made, cannot tell where James was.

JOSIAH CHAPIN.

Witness fees: 2 days' attendance, $3.00; 4 miles' travel, 20—$3.20.

Sworn to and subscribed before me this 6th day of April, A. D. 1861.

JOSEPH S. PITMAN,
U. S. Commissioner.

121 "O."—*Payments made by Globe Printing for stock in the Atlantic De Laine Co.*

1851.			
Jany.	21.	Accepted Geo. W. Chapin's attorney's draft, due and paid May 24th, 1851	$5,000
Febry.	15.	Accepted Geo. W. Chapin's attorney's draft at 6 mos., due and paid, Aug. 15–18, 1851	3,500
March	15.	Accepted Geo. W. Chapin's attorney's draft at 6 mos., due Sept. 15–18, 1851, paid Sept. 16, 1851.	2,500
April	15.	Accepted Geo. W. Chapin's attorney's draft at 6 mos., due Oct. 18, paid Oct. 17, 1851	2,000
May	15.	Accepted Geo. W. Chapin's attorney's draft at 6 mos., due Nov. 18, and paid same date	4,500
June	12.	Accepted Geo. W. Chapin's attorney's draft at 6 mos., due Dec. 12–15, paid Dec. 13, 1851	3,000
June	30.	Paid Geo. W. Chapin, attorney, cash	1,500
Dec.	30.	Paid Geo. W. Chapin, attorney, cash	3,000
			$25,000

Annexed to the deposition of Josiah Chapin, April 6, 1861, by me,

JOSEPH S. PITMAN,
Commissioner.

Interrogatories to Jacob Frieze.

Interrogatories to be propounded on the part of the Atlantic De Laine Company and George W. Chapin to Jacob Frieze.

1. What is your age, residence, and occupation?

2. Where did you reside and what was your occupation in the winter and spring of the year A. D. 1853? And if you say you were in the employ of Charles T. James, please state in what capacity.

122 3. State whether, to your knowledge, the said James, during the months of February or March, A. D. 1853, received a letter from Lyman B. Frieze in relation to any proposed settlement between said James and the Atlantic De Laine Company and George W. Chapin, trustee. If you say he did, state, if you know, where said letter now is; and if the same is in your possession or control, produce and annex the same; if not, please state its contents, or the substance of the same.

4. State whether said James had any conversation with you in relation to said letter. If you say he did, state the same, or the substance of the same.

5. State whether said James requested or directed you to make any answer to said letter; and if so, what answer. State whether you made such answer, and whether verbally, or by letter or despatch; if you have the same, or a copy of the same, please produce it; if not, state its contents or the substance.

6. State as nearly as you can the date when the said answer was made.

7. State how long you remained in the employ of said James, and whether he was in the habit of conversing with you about his business affairs, and whether you heard him at any time make any complaint of any settlement between his assignee and the said Atlantic De Laine Company and George W. Chapin, trustee. If so, state when, where, and what he said.

8. State any other matter or thing within your knowledge material to the defendants in the case.

A. PAYNE,
Solicitor for Atlantic De Laine Co. and George W. Chapin.

Cross-interrogatories to Jacob Frieze.

The complainant objects to the third interrogatory on the part of the defendant to Jacob Frieze, as the letter therein referred to is inadmissible as evidence upon any of the issues in said suit, and also, because if admissible, no facts have been proved in the case which would justify the offering of secondary evidence of its contents.

123 The complainant also objects to the fifth direct interrogatory, because no case is made for proving the contents of the letter inquired about by secondary evidence.

And without waiving said objections, the complainant puts the following interrogatories, de bene:

1. If you produce any letter in answer to the third and fifth direct interrogatories, state how, when, and where, and by what or whose authority or permission they came into your possession, and if you produce such letter and telegrams, annex the originals thereof to your deposition.

2. If you produce any such letters or telegrams, state where they

have been, and in whose possession, from the time when they were received or written to the time of their being produced by you.

T. A. JENCKES,
Solicitor for Complainant.

Deposition of Jacob Frieze.

I, JACOB FRIEZE, being duly sworn according to law, on oath depose and say, in answer to the several interrogatories propounded to me on the part of the respondents:

In answer to the first interrogatory, he saith: I am seventy-one years of age; I reside in North Providence; writing is my occupation.

In answer to the second interrogatory, he saith: I then resided in the same place; and I was then employed as clerk of one of the committees of the U. S. Senate at Washington. I cannot say that I was in the employ of Gen. James. I wrote for him whenever he required it, but I was in the employ of the Senate and was paid by them.

In answer to the third interrogatory, he saith: I know that that letter was received, because he gave it to me, and consulted with me on the subject. I do now know where that letter is. The substance of that letter was a proposition from the Atlantic De Laine Company for the settlement of the affairs between the company and Gen. James. Gen. James showed me that letter in Washington, at the National Hotel. That letter was received in March, 1853.

124 In answer to the fourth interrogatory, he saith: He did. After I had read the letter he said to me, "they have got from me the most of what I had, and now want the rest." Those were, I think, his words. He then asked me what I thought he had best do about it. I told him that probably those were the best terms that Lyman, his assignee, could obtain; that probably it was better to settle it in that way than not at all. After some further immaterial conversation, he said he supposed that it was the best he could do, and should consent to them.

In answer to the fifth interrogatory, he saith: I cannot say whether an answer was expected or not. I presume and feel quite positive that there was: but I should not dare to say explicitly that such was the case. I haven't it, nor any copy of it, and cannot state its contents or substance.

In answer to the sixth interrogatory, he saith: The letter was received in the spring of 1853; at what particular date I cannot say.

Examination adjourned to April 6th, 1861.

April 6th, 1861.—Examination resumed.

In answer to the 7th interrogatory, he saith: I had been for several years previous to 1848 occasionally employed by Gen. James to write for him. I was steadily in his employ up to, I think, the latter part of 1852 or 1853, having been otherwise employed afterwards, as already stated. I did not consider myself in his employ, though I continued to do his writing, or at least much of it, until some time subsequent to the expiration of his senatorial term. He was frequently in the habit of conversing with me on his business affairs. I drew his contracts; penned all, or nearly all, his business letters, and wrote the answers to those he received, except for two or three years of the latter part of the time, when those of a financial character were usually referred to my son, Lyman B. Frieze. I have no recollection of having heard Gen. James make any complaint about the settlement between his assignee

and the Atlantic De Laine Co., after the reception of the letter referred to. He may have done so, but I think he never did to me.

In answer to the eighth interrogatory, he saith: I know nothing.

125 Cross-examination:

And in answer to the several cross-interrogatories of the complainant, he deposes as follows:

In answer to the first cross-interrogatory, he saith: I have produced no such letter or telegram.

In answer to the second cross-interrogatory, he saith: My answer to the next preceding interrogatory is my answer to this.

JACOB FRIEZE.

Witness fees: 2 days' attendance, $3.00; 4 miles' travel, .20.

Sworn to and subscribed before me this 6th day of April, A. D. 1861.

JOSEPH S. PITMAN,
Commissioner.

Interrogatories to Geo. B. Holmes.

Interrogatories to be propounded to George B. Holmes, a witness to be examined in said cause, on behalf of the Atlantic De Laine Co. and of Geo. W. Chapin.

1. What is your age, residence, and occupation?

2. Did you have any knowledge, during the months of February or March, A. D. 1853, in relations to any negotiations for a settlement, and a settlement between Charles T. James and the Atlantic De Laine Co. and George W. Chapin, trustee? If so, state all the facts within your knowledge in relation to the same; and particularly state at whose request you took part in the same, if any part you took; in whose behalf you acted, if in behalf of any person; and whether or not in behalf of Lyman B. Frieze, assignee of Charles T. James, you proposed to George W. Chapin to make such settlement.

If you say that such negotiations were had, state how long they continued, and whether or not they resulted in a settlement; state
126 whether or not the mutual releases between the parties were placed in your hands, and if so, for what purpose; how long, if at all, they remained in your hands; and at what date, if at all, they were finally delivered and exchanged between the parties.

4. State whether, during said negotiations, if any statement of the affairs of the Atlantic De Laine Company was before you; if so, who exhibited the same; and if you say it was Lyman B. Frieze, state if he told you from whom he obtained the same, and state whether you made any use of the same, and if any, what? If you made up any statement of the account between Charles T. James and the Atlantic De Laine Company and George W. Chapin, trustee, please produce and annex the same, or a copy thereof, and state from what sources the same was made up.

5. If you say you saw a statement of the affairs of the Atlantic De Laine Company, please state whether you ever said to William H. Parkhurst, or any other person, (speaking of said statement,) "This is the lamest or the blindest thing I have ever seen. It is a regular two-faced thing; for by this paper this company have either lost eighty thousand dollars, or they have made double that sum;" or anything to that effect.

If you made any remark about said statement to said Parkhurst, state what you said, or the substance thereof.

6. State whether, at any time, you saw any letter despatched from Chas. T. James, or from any one in his behalf, in relation to said settlement. If you say you did, produce the same, or a copy thereof, if in your possession or control; if not, state the contents thereof, or the substance of the same.

7. State whether, or not, your relations with said Charles T. James up to that time have been intimate; whether you had had any business transactions with him, and of what nature. State whether, after that time, you saw him frequently, or otherwise, and whether you conversed with him about his affairs; and if so, if he said anything about the settlement aforesaid; if so, what did he say? State if he ever made any complaint about, or found any fault with, the same; if so, state when and what he said.

8. State any other matter or thing material to the defendants in the case, within your knowledge.

A. PAYNE,
Solicitor for Respondents.

127 *Cross-interrogatories.*

1. Was a paper, a copy of which is called for by the 4th direct interrogatory, the only paper exhibited to you, or examined by you, prior to the settlement between said Frieze and the De Laine Co.?

2. Was your advice founded upon the contents of said paper?

3. Was any paper shown to you by said Chapin, or by said Frieze, as coming from said Chapin, after the settlement had been agreed upon; and if so, what was it?

4. Did you make any attempt to verify any of the statements in either of said papers, by examination of the books of the Atlantic De Laine Company, either by yourself or by any other person?

5. Where was Charles T. James at the time of said settlement?

6. Do you not remember that A. R. Fiske opposed said settlement on behalf of said James and himself?

7. Do you not know that Charles T. James knew nothing about the settlement, except such information as he received from said Frieze by letter, until his return from Washington?

8. Have you made any attempt to verify the accuracy of Mr. Chapin's statements at any time, or in any manner, since said settlement?

T. A. JENCKES,
Solicitor for Complainants.

Deposition of Geo. B. Holmes.

GEORGE B. HOLMES, of Providence, being duly cautioned and sworn according to law, deposes and saith in answer to the several interrogatories put by the respondents:

In answer to the first interrogatory, he saith: About 67 years of age. My residence is in Providence, R. I. I am an iron-founder by occupation.

In answer to the second interrogatory, he saith: I called upon Geo. W. Chapin about the first of March, 1853, at the request of Lyman B. Frieze, assignee of Charles T. James, to see if any arrangement
128 could be made towards the settlement of Charles T. James' matters and accounts with the Atlantic De Laine Co. I acted as

adviser to Lyman B. Frieze, assignee. I proposed to Geo. W. Chapin, trustee, to have the whole matter settled.

In answer to the third interrogatory, he saith: The negotiations were under consideration by the parties some three or four days. A settlement was made, and releases were written and signed by the parties and placed in my hands, to be held by me until the proper papers could be prepared and properly executed by the parties. The papers were in my hands three or four weeks.

In answer to the fourth interrogatory, he saith: There was such a statement before me, and I understood it came from the Atlantic De Laine Company, and Mr. Frieze or Mr. Parkhurst handed me the statement. From it, and the books, and accounts of the company with Mr. Frieze and Gen. James, I made up the annexed statement marked "A," in order to see what James' interest would be worth. I estimated his stock to be worth seventy per cent. At that value he would be left $2,574.00 in debt. With the information I obtained elsewhere, from disinterested parties, as to the value of said stock, and seeing the company were heavily in debt, and ascertaining that the stock could not be sold for fifty cents of its par value, and finding there was no sale for it, under these circumstances I advised Mr. Frieze to settle the whole matter.

In answer to the fifth interrogatory, he saith: I had several conversations with Mr. Parkhurst in regard to the De Laine Mill account. I have no recollection of saying any such thing respecting the statement furnished to Mr. Frieze by the Atlantic De Laine Co. On first looking at the statement I did not understand it, and my impression was that the company had made some seventy thousand dollars; but on a more particular examination there was no difficulty in finding that they had lost a large amount of money.

In answer to the sixth interrogatory, he saith: There were several dispatches passed between Gen. James and Mr. Frieze while the negotiations for a settlement were in progress, and I have no doubt I saw them; but it is so long since I cannot recollect their contents. I have no recollection of Gen. James' making any objection to the settlement.

In answer to the seventh interrogatory, he saith: Previous to that time they had been intimate. I had no business relations with
129 Gen. James at that time, except concerning his mansion-house, which I purchased at the trustee sale. Saw him frequently after the settlement, on his return from Washington, and conversed about his business affairs. He said nothing about the settlement. He never made any complaint about it to me.

In answer to the eighth interrogatory, he saith: No recollection of anything else.

And in answer to the several cross-interrogatories propounded on behalf of the complainant, the said deponent deposeth and saith as follows:

In answer to the first cross-interrogatory, he saith: There were other papers besides the statement before me, such as the books and accounts of the assignee and the accounts of the company with Frieze and James.

In answer to the second cross-interrogatory, he saith: My advice was founded upon the statement and accounts before me, and the general value of the property, and from the best information I could obtain, and from my own judgment.

In answer to the third cross-interrogatory, he saith: There was not.

In answer to the fourth cross-interrogatory, he saith: No; from the character of the parties I did not think of any such thing.

In answer to the fifth cross-interrogatory, he saith: At Washington, D. C.

In answer to the sixth cross-interrogatory, he saith: I have no knowledge that he did.

In answer to the seventh cross-interrogatory, he saith: I do not.

In answer to the eighth cross-interrogatory, he saith: I have not, for the reason given in my answer to the fourth cross-interrogatory.

GEO. B. HOLMES.

Witness fees: 1 day's attendance, $1.50; 2 miles' travel, .10—$1.60.
Sworn and subscribed before me this ninth day of April, A. D. 1861.

JOSEPH S. PITMAN,
U. S. Commissioner.

130 *Interrogatories to George W. Chapin.*

Interrogatories to be propounded to George W. Chapin, on the part of the Atlantic De Laine Co., one of the defendants in said cause.

1. State your age, residence, and occupation.

2. Do you hold any office in the Atlantic De Laine Co.? If so, what; and how long have you held the same?

3. State, if you know, the actual value of the property assigned by Charles T. James to Lyman B. Frieze by the deed of assignment mentioned in the bill of complaint, and taken possession of by said assignee. State fully your means of knowledge upon this subject.

4. What was the amount and nature of the interest of Charles T. James, at the time of his executing the assignment aforesaid, in the property of said Atlantic De Laine Co., and whether he was entitled to any certificates of shares in the capital stock of said company at that time; and if to any, to how many; and if not to any, why not? State fully.

5. State whether said James, at the time of his executing the assignment aforesaid, had paid anything towards his subscription to the capital stock of said company; if so, how much and in what manner? State fully and particularly, and give your means of knowledge.

6. State whether the remainder of the said subscribers to the capital stock of said company had paid in any portion of their subscriptions prior to the assignment of said James; if so, what portion and what manner? State fully, and give your means of knowledge.

7. State with whom the negotiations which resulted in the loan of seventy-five thousand dollars and the mortgage to secure the payment of the same were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

8. State whether, or not, the said mortgage was made, and the provisions in said assignment requiring the assignee to complete the contract with the Atlantic De Laine Co. were insisted upon, upon any understanding or assurance on your part; if so, upon what understanding and assurance, and on whose behalf. State fully and particularly your knowledge upon this subject, and give your means of knowledge.

9. State whether the said mill was completed, and the said machinery furnished, according to the contract with said James mentioned
131 in the bill of complaint; if you say they were not, state fully and

particularly why not; give your knowledge, and your means of knowledge upon the subject.

10. State whether, or not, the said Atlantic De Laine Co., through you as their treasurer, made any claims upon the said James, and upon the said Frieze, his assignee, for anything connected with, or on account of, said contract; if you answer that they did, state fully and particularly the nature and extent of such claims. State how and to whom the same were made, and what was said and done in relation to the same.

11. State whether the claims aforesaid were, at the time when so made, *were* by you believed to be just and legal claims against said James and his estate; and state whether the same were made, to your knowledge, with any design to hinder or prevent a settlement between the said company and the said James.

12. State whether the said claims did, to your knowledge, in fact, hinder or prevent any settlement between the said company and said James.

13. State all the facts in your knowledge and recollection relating to any attempted settlement between said company and said James prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James, or his assignee, and by yourself, as treasurer of said company, in relation to such attempted settlement, if any.

14. State whether, or not, to your knowledge, the said Atlantic De Laine Co. ever neglected and refused to render any statement of their accounts with the said James, or with his assignee, the said Frieze.

15. State whether, or not, the said James, or his said assignee, ever requested to be furnished with such accounts, to your knowledge or recollection.

16. State whether, or not, the said James and his said assignee had at all times full means of knowing the state of such accounts.

17. State whether, or not, the said James, or his said assignee, ever to your knowledge complained that they had not or could not obtain a knowledge of the state of such accounts.

18. State if you know anything in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James', interest in the
132 property of the said Atlantic De Laine Co. State all that you know in relation to that subject, if anything.

19. State whether, or not, the said James ever called upon you in company with such persons, or with any person or persons, and requested a statement of the account of said company with the said James and with his estate; if so, state when, with whom, and what, if anything, was said and done, and especially state whether then, or at any time, such statement was refused by you. State fully and particularly your recollection upon this subject.

20. State under what circumstances you advertized said mortgaged property for sale, as is alleged in said bill. State whether, or not, the same was made in violation of any understanding, agreement, or assurance, and especially state whether, to your knowledge at the time, any claim or pretence was made that such advertisement was in violation of any such understanding, agreement, or assurance. State fully and particularly all that passed between yourself and the said James or his assignee, in relation to such advertisement.

21. State whether, or not, you ever rendered any statements to said Lyman B. Frieze, assignee of said James, which you represented or pretended was a proper statement of the accounts of the said Atlantic

De Laine Co. with the said James, and of the affairs of said Atlantic De Laine Co.; if so, and the same were in writing, please produce and annex the same or a copy thereof; when was the same rendered; where and to whom, and at whose request, and under what representations; state whether the same were preceded by any verbal communications by you to the said Frieze or the said James; if so, state when and where the same were made, and give the substance of the same to the best of your recollection.

22. State whether the said statements were ever withheld by you from said Frieze or said James, when requested, or, to your knowledge, desired; state whether the same when rendered were incorrect and untrue. Please explain fully and particularly all the circumstances under which said accounts were rendered.

23. State all the circumstances under which the mutual releases between the said Atlantic De Laine Co. and the said Frieze, mentioned in said bill, were made; state who first suggested the same, and when and where; state what was done in pursuance of such suggestions,
133 and state fully and particularly all that was said and done in relation to the same by yourself or the said Frieze.

24. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge or assent of said James. State fully all that you know upon this subject.

25. State whether or not said statements of the affairs of said De Laine Co. were made with the intent to deceive and defraud the said Frieze, and state fully for what purpose the same were made.

26. State whether the attempt to foreclose the said mortgage upon said stock by a sale thereof, or any of the acts of the said Atlantic De Laine Co., or of yourself, or of any of the officers of said company, in relation to said stock, or the sale thereof, was to your knowledge with the intent, on your part or on the part of the said defendant corporation or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reasons for such attempt, so far as they are known to you.

27. State whether or not the said James, since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding. State fully your knowledge upon this subject.

28. State fully, to your knowledge, all the facts in relation to a judgment recovered by yourself against said James mentioned in said bill.

29. State, if you know, where the statement of the affairs of the said company, which you rendered to said assignee, now is; state whether you made any effort to obtain the same; if so, state when, from whom, and for what purpose. State fully and particularly your knowledge upon this subject.

30. State the place where, and by whom, the books of account of the said company were kept, naming the particular books kept at each place, and the person by whom the same were kept.

31. State whether any, and if any what, expenditures were made in and about said mill after the assignment of Gen. James, under the direction of said Atlantic De Laine Co., or any of its officers and employees. State fully all that you know upon this subject.

134 32. State what, at the time of the execution of the releases mentioned in said bill, was the nature and amount of the claims of said company, and of yourself as trustee, upon said James and upon his estate. State also the condition of said company at the same time, and

the value of its capital stock. State fully and particularly your knowledge upon the subject.

33. Annex to your deposition a copy of the charter of said Atlantic De Laine Co., and state whether or not the said company have complied with the provisions of the law of Rhode Island, in order to exempt the individual corporators from personal liability for the debts of the corporation, and state whether the individual corporators were so liable.

34. State any other matter or thing material to this case within your knowledge.

A. PAYNE,
Solic. for A. D. Laine Co.

Cross-interrogatories.

The complaintant objects to the examination of George W. Chapin as a witness in said cause, to whom interrogatories have been exhibited on behalf of the defendants, because the said George W. Chapin is a party defendant in said cause, and is not a nominal party thereto, but has an interest in whatever decision may be rendered therein;

And because no application has been made to the court for leave to examine the said George W. Chapin as a witness on behalf of either party in said cause, and no order of court has been made authorizing the taking of his testimony.

Without waiving any objection to the competency of said witness, the complainant puts the following cross-interrogatories, de bene, and makes the following objections to the direct interrogatories propounded by the defendants:

Complainant objects to the 3d direct interrogatory, because it calls for a statement of facts that is not, and could not have been, within the knowledge of the witness; and because any answer given to said interrogatory would contain statements which are irrelevant and immaterial to any issue in this cause. And to the 27th direct interrogatory for the same reasons.

1. Are you, or not, a stockholder in the Atlantic De Laine Company? And if yea, have you not been a stockholder from the beginning of
135 that company; and what was your interest at said beginning, and how has that interest changed from time to time since? Give your exact interest from time to time.

2. If you refer to any books or papers in answering the direct interrogatories, you will annex copies of all such papers, and of the entries on the books referred to, and produce the originals of said books and papers, to be marked by the commissioner, and produce them at the hearing of this cause.

3. Are you one of the defendants in this suit?

T. A. JENCKES,
Solicitor for Complainants.

Commissioner's return.

To the hon. the circuit court of the United States for the district of Rhode Island, respectfully report

Joseph S. Pitman, the within-named commissioner, that after having been duly engaged under the within commission, I caused the within-named George W. Chapin to appear before me on the 21st day of March, 1861, and carefully examined him upon the interrogatories annexed to said commission, as far as to the twenty-fourth direct interrogatory, and

reduced his replies to the same in writing. Said deponent, before giving his replies to the same, was sworn to testify the truth, the whole truth, and nothing but the truth, and the same were by me reduced to writing in his presence.

J. S. PITMAN,
U. S. Commissioner.

Deposition of George W. Chapin.

On the twenty-first day of March, A. D. 1861, personally appeared before me George W. Chapin, who, being duly sworn according to law, and being first cautioned by me, was examined upon the interrogatories annexed to the foregoing commission, in answer to which he deposed as follows:

In answer to the first direct interrogatory, he saith: Forty years of age; North Providence; merchant.

In answer to the second direct interrogatory, he saith: I do.
136 I was attorney for the subscribers for the stock, and have held the offices of treasurer and director from the formation of the company. I now hold those offices.

In answer to the third direct interrogatory, he saith: I have no personal knowledge upon the subject. My information was derived from Gen. James' assignee. From him I understood that it was about seventy thousand dollars; that was about the amount which the Atlantic De Laine Company received the benefit of, under the clause in Gen. James' assignment directing his assignee to complete his contract with the company. The Atlantic De Laine Company were preferred, in the first class of creditors under said assignment, but never received anything. For these reasons, I suppose that the representations of the assignee as to the value of the property assigned to him were correct. I do not include in this estimate the interest which Gen. James in the stock of the Atlantic De Laine Company, upon which the company had a lien, and George W. Chapin, trustee, had a mortgage; nor do I include the other property of Gen. James covered by mortgages to said trustee.

In answer to the fourth direct interrogatory he saith: Gen. James originally subscribed one hundred and fifty shares of the capital stock, and at the time of his assignment he had, in the performance of his contract, paid in work and materials one hundred and thirteen thousand dollars, which would entitle him to one hundred and thirteen shares of stock. But this was subject to a deduction of about one hundred and one thousand dollars, being the amount advanced to him by the company, under the contract, over and above the work and materials furnished by him at the time. He was not entitled to any certificate of stock, nor was any other stockholder; the company was not in a condition to issue such certificate, and had not ordered the issue of any. The stock was not all subscribed for, the mill was not completed, and the business of the company was not commenced. The mode of dealing between Gen. James and the company was as follows: When the first installment fell due under the contract, without any reference to the amount of work and materials then furnished by Gen. James, the company by me, as attorney, before incorporation, and treasurer after incorporation, drew upon each subscriber to the stock, Gen. James included, drafts for their proportional amounts of the said installment. These drafts were handed to Gen. James, and he gave a receipt for the installment, and the company gave
137 him credit for the amount of the draft drawn upon him as so

much paid towards his subscription for stock, and so on as the different installments fell due. In thismode of doing business, and in no other way, Gen. James at the time of his assignment had paid in one hundred and thirteen thousand dollars towards his subscription for stock. At the same time, the company had paid to him on account of his contract a sum exceeding the value of the work and materials then performed by him, and furnished by him under it, at least one hundred and one thousand dollars; so that even if this stock upon which the company had a lien, and I as a trustee of the stockholders had a mortgage, was at this time reckoned at par, he had a very small, if any, interest in the company.

In answer to the fifth direct interrogatory, he saith: I have answered this in my answer to the fourth interrogatory, in the manner therein set forth; he had credit for one hundred and thirteen thousand dollars, as paid in. He never actually paid in any money.

In answer to the sixth direct interrogatory, he saith: Gen. James' assignment was made September 2d, 1851. At that time, the other stockholders had paid in, on account of their several subscriptions, as follows: Hoyt & Tillinghast subscribed for $25,000. They had accepted my drafts at six months for $20,500, eighty-five hundred dollars of which had become due and been paid by them. They had also paid in cash the sum of $2,500. Hacker, Lea & Co. subscribed for $25,000. They had accepted my drafts at six months for $20,500, eighty-five hundred of which had become due and been paid by them. They had also paid in, in cash, the sum of $2,500. Hill, Carpenter & Co. subscribed for 30,000. They had accepted my drafts at six months for $16,000; none of which had fallen due. They had paid in, in cash, the sum of $10,400. Globe Printing Company subscribed $25,000. They had accepted my drafts at four months for $5,000, which had fallen due and been paid by them. They had also accepted my drafts on six months for $15,000; $3,500 of which had become due and been paid by them. They had also paid in, in cash, the sum of $1,500. Dodge, Tucker & Co. subscribed for $15,000. They had accepted my drafts at six months for $12,000, $3,500 of which had become due, and been paid by them. They had also paid in, in cash, the sum of $1,800. Harrison & Co. had subscribed for $10,000. They had accepted my drafts, on six
138 months, for $9,000, none of which had become due. They had paid in, in cash, the sum of five hundred dollars. Day, Owen & Co. subscribed for $3,000. They had accepted my draft on six months for $2,000, which had not become due. They had paid in, in cash, the sum of two hundred and fifty dollars. The above is derived from my personal knowledge of the transactions which were entered at the time upon the books of the company.

In answer to the seventh direct interrogatory, he saith: Up to that date all payments due to Gen. James having been made on the first of July, 1851, Gen. James applied to me as treasurer for an advance of fifteen thousand dollars on account of his contract, which was made; afterwards he applied for a further advance of fifteen thousand dollars, which was not made. Soon after this, I received a letter from Gen. James, of which a copy is annexed, marked "A;" upon receiving this letter, I notified the stockholders, and they met at Providence informally. As prompt action was desired, and as the corporation could only act at a meeting duly called according to the charter, upon six days' notice, the stockholders after hearing the statement of Gen. James, and considering the matter, decided to make a loan of seventy-five thousand dollars to Gen. James, in the proportions in which they held stock in the

company. This loan was made by all parties, except Day, Owen & Co., who had only three shares, and were not notified, on account of their small interest. Harrison & Co. did not take part in the loan, as they were financially in trouble. The negotiations were conducted by Messrs. Hoyt, Lea, Carpenter, Josiah Chapin, and myself. The substance of the circumstances consisted in the fact that Gen. James represented that he must have the loan to enable him to go on with his contract. That a large portion of it should go directly to parties furnishing machinery for the mill, which was then about ready for delivery, and detained for want of payment. Also, that if the loan was made, the contract should be completed, let what would happen. The terms and conditions of this loan were in writing; a copy of which is annexed, marked "B."

In answer to the eighth direct interrogatory, he saith: The loan was made under the circumstances and upon the terms and conditions set forth in my answer to the seventh interrogatory. There was no understanding or assurance of any kind, except that General James ex-
139 pressed a wish that, in case we should be obliged to resort to our securities, all the others should be exhausted before resorting to his stock in the Atlantic De Laine Co., to which I assented. The provision in the assignment was inserted by Gen. James, and was in accordance with the representation made by him, at the time of said loan, that in case of his failure such a provision should be inserted in the assignment, and upon no other understanding whatever. There was never any understanding, assurance, or agreement that the stock of Gen. James should not be foreclosed to his injury or his estate; or any assurance on my part, in any capacity, that said stock should be retained and held by me until the same could be disposed of for its full value. In different conversations and in correspondence with Gen. James, after his assignment and before the settlement with the assignee, in relation to a settlement, and in relation to selling the property under the mortgages, although Gen. James at different times urged the postponement of such sale, he never alluded to or pretended that there was any such understanding or agreement as is alleged in this bill.

In answer to the ninth direct interrogatory, he saith: By the terms of the contract with Gen. James the mill and machinery were to be ready for the overseers and operatives on the 1st day of August, 1851. On this day the building was about completed. The engine was in progress, but not more than half done; some of the shafting was up; scarcely any machinery had been put into the mill; I don't think more than thirty thousand dollars' worth. But little more machinery was received until towards the middle of October, during which month the bulk of it came; but it was not until after the 20th of January, 1852, that the last of it was delivered. My means of information are my own observations.

In answer to the tenth direct interrogatory, he saith: I have no recollection of any distinct conversation with Gen. James upon the subject of damages, though I have no doubt the subject was frequently mentioned to him. This claim was based mainly upon a loss on purchases of wool made upon the faith of the contract, and in anticipation of a large and profitable fall business. The loss was a heavy one, and frequently spoken of by Mr. Carpenter and other members of the company. Early in the fall of 1851, and before the time when the company made the loan to him to enable him to go on with his contract, the assignee of Gen.
140 James knew of this claim, and it was frequently spoken of in my conversations with him. When I furnished him with a statement of the affairs of the company I put this down as one of them.

In answer to the eleventh direct interrogatory, he saith: Said claims were by me believed to be legal and just, and were not made with any design to hinder or prevent a settlement between the company and James or his assignee.

In answer to the twelfth direct interrogatory, he saith: I have no knowledge that those claims did hinder or prevent any settlement; and neither Gen. James nor Mr. Frieze ever intimated to me or to the company that they did hinder a settlement. These claims were compromised and released in the settlement.

In answer to the thirteenth direct interrogatory, he saith: On the 10th of April, 1852, Gen. James made a proposition of settlement, a copy of which is annexed, marked "C." This proposition was submitted to the different members of the company, and after considerable correspondence, consultation, and meeting and listening to the statements of Gen. James, and to various proposed modifications of the propositions submitted by him, it was rejected. A reference of all matters in dispute between the parties was once proposed, I think, by Gen. James. The papers were drawn up and signed, but nothing was ever done under them. I have an impression that the referees declined to serve.

In answer to the fourteenth direct interrogatory, he saith: The statement of the accounts of the company with James for building the mill, and with Frieze for advances made him, or any other accounts with either of them, were never refused at any time.

In answer to the fifteenth direct interrogatory, he saith: James never requested any such accounts. Mr. Frieze did, and they were furnished him.

In answer to the sixteenth direct interrogatory, he saith: They had free access to the books at all times, and could at any time know the state of their accounts.

In answer to the seventeenth direct interrogatory, he saith: They never, to my knowledge, complained that they either had not or could not obtain a knowledge of their accounts.

In answer to the eighteenth direct interrogatory, he saith: I know nothing in relation to any such offer, and never heard that any such was made until this suit was commenced.

141 In answer to the nineteenth direct interrogatory, he saith: He never called upon me with any person or persons and requested a statement of accounts of the affairs of the company or accounts of the company with him or his estate; nor did he, alone, ever ask for any such accounts, or express any curiosity to know the condition of said accounts. No such statement was ever refused him by me, nor by any one, to my knowledge.

In answer to the twentieth direct interrogatory, he saith: On the 14th day of September, 1852, I notified Mr. Frieze that unless an arrangement was made by which the parties for whom I acted should receive their money, I should proceed to sell under the mortgages. I had some interviews with Mr. Frieze and Gen. James. Gen. James strongly opposed the sale, and urged a good many reasons why it should not be made, and stated that if it was attempted he should get an injunction. After consultation with the parties interested I delayed the advertisement of the property for sale until the February following. When it was advertised an injunction was prayed for as stated in said bill. The advertisement was made in accordance with the power contained in the mortgages, and was not in violation of any assurance, understanding, or agreement whatever; nor did Gen. James, or his assignee, at the time of the advertisement, nor at any other time, pretend that the same

was in violation of any understanding, assurance, or agreement; nor did I ever hear from any source of any such assurance, understanding, or agreement until after the filing of the bill.

In answer to the twenty-first direct interrogatory, he saith: On the 15th of February, 1853, I received from Mr. Frieze, assignee of Gen. James, a letter of which a copy is annexed, marked "D." I afterward saw Mr. Frieze at my office, and gave him verbally a statement of the condition of the company, of its liabilities and assetts, with which verbal statement I understood him to express himself satisfied. I supposed that nothing more was necessary. When an injunction was granted upon the allegation of said Frieze that he had been unable to obtain the accounts which he desired, I rendered him a statement, a copy of which is annexed, marked "E," showing the condition of the company January 1st, 1853. This statement was taken to Mr. Frieze by my clerk, George W. Munroe, in a sealed envelope, with a letter to Mr. Frieze, a copy of which is annexed, marked "F." I did not render any statement of the accounts of the company with Gen. James, as none was requested.

142 In answer to the twenty-second direct interrogatory, he saith: Said statements were never withheld by me from either Frieze or James, when requested or desired. When rendered it was both correct and true. I have explained the circumstances in my answer to the twenty-first interrogatory.

In answer to the twenty-third direct interrogatory, he saith: Some days after I had furnished Mr. Frieze the statement referred to in my answer to the 21st interrogatory, viz, on the 28th of February, 1853, Mr. George B. Holmes called at my office, and my impression is that he said he came as a friend of Frieze and James. He enquired if an adjustment of the matters in dispute between us and Gen. James might not be made without further litigation. This was the commencement of the negotiations for a settlement. After communicating this proposition to the stockholders, these negotiations were continued for several days and resulted in mutual releases between the parties. I cannot tell who first proposed this mode of settlement, but my impression is that the proposition was made by the parties representing Gen. James. Mr. Hoyt was in Providence and took part in the negotiations. The papers between the company and trustee and the assignee were signed March 5th, 1853, and placed in the hands of Mr. George B. Holmes until the individual releases of the stockholders were obtained. These did not come to hand until after the tenth of March, after which the papers above mentioned were exchanged.

(Examination adjourned to May seventh, when the same was continued from the twenty-third direct interrogatory (the answer to which was not completed) by James H. Parsons, U. S. commissioner, acting under an agreement between the counsel in this case, duly filed in the clerk's office of this court, to the effect that the testimony in the suit should be completed by him.)

The deponent further saith in answer to the twenty-third direct interrogatory: The company made the settlement agreed upon with great reluctance, feeling that they were receiving scarcely any value for the large amount of money loaned. Nothing but the fact that there was no possibility of obtaining any more from James or the assignee led them to make it. When the seventy-five-thousand-dollar loan was made to James

143 the parties supposed they received security to the value of at least one hundred thousand dollars independent of his interest in the De Laine Company, and as late as June, 1852, at which time some negotia-

tions took place between them and James, said parties were confident that the trustee had sufficient property in his hands to pay off the loan, without foreclosing the mortgage on James' interest in the company. At this time, June, 1852, none of the property had been sold but the stock on the Warwick farm, realizing about thirteen hundred dollars. The mortgage on the homestead was valued at twenty thousand dollars, but realized only ninety-eight hundred and fifty. The mortgage on the Warwick farm was valued at ten thousand dollars; it only realized $5,786.79. The mortgage on the Scituate farm was valued at three thousand dollars; nothing was realized from it. The fifty thousand dollars of Cannelton notes were valued at par; we obtained only twenty-one thousand dollars for them. These notes were secured by a mortgage on the Cannelton mill, in Indiana, which James had built for the Cannelton Company. He received in part payment therefor their acceptances of his drafts. These mortgage notes were put into his hands by the company for negotiation, the proceeds to be applied to the payment of said acceptances of his drafts. In violation of this trust, he pledged the said fifty thousand dollars of notes to me as trustee, for part security for the seventy-five-thousand-dollar loan. His drafts on the Cannelton Company, which he had negotiated with various parties, went to protest—the company having failed. The different holders of these drafts claimed of me said mortgage notes, as their property, on account of the agreement made by James on the Cannelton Company. To avoid litigation, I was obliged to compromise with them for twenty-one thousand dollars. The one thousand shares East Tennessee Mining and Manufacturing Company, valued by James at $25,000, we never received anything for.

In answer to the twenty-fourth direct interrogatory, he saith: I did not know whether James was aware of the settlement or not. Afterwards, I understood from Mr. Frieze that he, James, approved of it. I did not consider it of any importance whether he approved of it or not, as Frieze had full power to settle with us.

In answer to the twenty-fifth direct interrogatory, he saith:
144 The statement of the affairs of the company was not made with any intention to deceive or defraud the said Frieze. I was always ready and willing to give him any information that he desired about the affairs of the company. He may have called, although I have no recollection that he did so, when a written statement could not be furnished immediately, on account of the books not being made up. When he called for information, I gave him, as before stated, verbally, all the information that I supposed he wanted. When the injunction was granted, I sent him a statement in writing, in substance and form the same as I was accustomed to send annually to the directors. He made no complaint and called for no further account. He could have had any explanation which he desired at any time.

In answer to the twenty-sixth direct interrogatory, he saith: Neither the attempt to foreclose the mortgage, nor any act of the company or myself, or any of the officers or members of the company, in relation to said mortgage and said stock, were with any intent to prevent any one from bidding at said sale, or with the object of obtaining the stock below its fair value; on the contrary, it was the desire of all that some one outside the company should purchase, as we were greatly in need of the funds, and proposed to make the sale to realize the amount due us, as far as the property would go.

In answer to the twenty-seventh direct interrogatory, he saith: I have no personal knowledge, but I am informed that certain claims have not been paid. The Atlantic De Laine Company hold a judgment against him for over five thousand dollars, with interests and costs thereon.

In answer to the twenty-eighth direct interrogatory, he saith: The note was originally made by Gen. James, payable to the order of Lyman B. Frieze, for five thousand dollars, and its payment was guaranteed by Globe Printing Company and Hill, Carpenter & Co. The purpose of making the note was to enable Gen. James to raise money to pay for labor at the De Laine Mill. It was preferred in the assignment of Gen. James, but was never paid by him or his assignee. It was paid by the guarantors, and was held by them, and was theirs at the time of the settlement of the Atlantic De Laine Company with Gen. James. After that settlement, the Atlantic De Laine Company purchased said note of the guarantors, paying the full amount due thereon.
145 They directed me to obtain judgment thereon. I did so; and transferred the judgment to the company, and the judgment is now unsatisfied.

In answer to the twenty-ninth direct interrogatory, he saith: I did not make any application for it till after the settlement with Frieze, when I told him said statement was useless to him, and, as the company's affairs were in a very unflattering condition, I would prefer that he would return it to me, that the public might not know how badly off we were. He gave it to me, and I suppose I destroyed it, as I cannot find it.

Adjourned to May 21st, 1861.

In answer to the thirtieth direct interrogatory, he saith: The books naturally belonging to the mill, such as time and labor books, books for keeping accounts of all articles received at the mill and used therein, invoice-books containing memoranda of all shipments of goods from the mill, and books for keeping account of the cost of goods manufactured, and also the rent-roll, were kept at the office at the mill. The accounts kept on these books were rendered to me as treasurer every six months, and on my books carried to the proper accounts. All invoices of goods were sent to me as soon as they were shipped, and at once entered on the books at my office. George F. Wilson was book-keeper at the mill. At my office in the city were kept the stock and transfer books, the day-book, journal, ledger, and cash-books, in which were contained all the transactions of the company. Therein were recorded all purchases and sales of merchandize, all notes given and paid, all drafts drawn and discounted, accounts with the various agents and banks, and an account of all articles and monies sent to the mill. At this office Samuel C. Blodget was book-keeper, and George W. Munroe assistant. At this office only were the books kept which showed the actual condition of the company's business and the amount and value of its property.

In answer to the thirty-first direct interrogatory, he saith: I annex an account of all the items of expenditures made by direction of the company, and charged James's contract-account. These items were deemed by the company to be properly embraced within James's contract, and chargeable to him. (See Exhibit G.)

In answer to the thirty-second direct interrogatory, he saith: At the time of the settlement we had loaned the assignee of James, to
146 aid him in completing the contract, $54,839.86. From this amount was deducted $13,098.98 due James's contract account for interest, &c., leaving a balance due by the assignee to the company of $41,740.88. There was due me as trustees of the stockholders $43,092.58—total amount due to both, $84,833.46. We also had a claim on James's estate for damages for non-fulfilment of his contract, which was put down in the statement furnished Frieze, marked "E," at $50,000. None

of the stockholders estimated the damages below this amount, and some of them much above it. The statement furnished the assignee was a true copy of the books January 1st, 1853. At this time James's bill for building the mill had never been presented to the company, and consequently had not been credited to his contract-account. At the time of the settlement it was agreed that the date on which his bill should be credited to his contract-account should be Feb. 1st, 1852. There was, consequently, eleven months interest on $260,000, say $14,300, due said account January 1st, 1853, increasing the liabilities of the company so much. In order to aid the assignee in obtaining the balance of machinery due from William Mason & Co., of Taunton, the company were obliged to join said Frieze in a bond to furnish certain stocks or their value. I annex a copy thereof, marked "H." Frieze was unable to obtain the stock, and the company were obliged to pay Mason & Co. $6,550 to be released from said bond. This bond, therefore, increased the liabilities of the company $6,550. The indebtedness of the company to various parties was, as will be seen by the statement, $552,046.02, to which must be added the above-mentioned sums of $14,300 and $6,550, making the total liability of the company, January 1st, 1853, $572,896.02. They had on hand at that date personal property, such as cash bills receivable, wool, cotton, stock at mill, de laines, cassimeres, &c., &c., valued at $355,855.21. The de laines, however, were overrated, they not realizing when sold as much, by $8,000, as estimated at. This amount deducted from $355,855.21 leaves $347,855.21 as the value of our personal property at that date; which amount, deducted from the amount of our liabilities, left $225,040.81 to be realized from the other assets of the company in order to enable it to pay its existing debts. These assets were only two, namely, the claim on the assignee for the amount loaned him to that date, which was $53,314.77, and the mill-property, which had cost $310,006.04. The first item was undoubtedly valueless,
147 as he, Frieze, had not a dollar belonging to the estate, and from that time to this has not realized enough therefrom to pay for his own services. The mill-property was not worth what it had cost. The market was overstocked with de laines, the raw material was high, our goods were bringing no more, if as much, as they cost to make, and there was but little probability of a change. The idea of abandoning, in whole or in part, the manufacture of de laines, was agitated both before and after the settlement. Soon after the settlement, it was resolved to sell what machinery was only adapted to making de laines, and replace the same by such as would enable us to manufacture cotton cloths with all the machinery. That not adapted for making cotton goods was sold for $20,000 less than it cost, to replace which with cotton machinery we had to pay $42,000. The steam-engine put in by James had proved so near a total failure that, after expending nearly $5,000 to put it in order, and stopping the mill often to repair it—at one time five consecutive weeks—it was decided before the settlement to replace it with a new one. This was done shortly after, costing us $10,000, after deducting what was received from the sale of the old engine. Allowing the mill to have been worth its cost, and to be sold for the $310,000, it would leave $85,000 to be divided among the stockholders, who held two hundred and thirty-seven shares, giving the value of each share $355.65; and for the one hundred and thirteen shares belonging to the assignee, $40,527.45, a sum insufficient to pay the trustee's claim alone. The above statement refers to January 1st, 1853, when the accounts of the company, as was their uniform custom, were made up and their books balanced. At the time of the set-

tlement, the affairs of the company were substantially the same. The condition of the company was a critical one. They were carrying a very heavy accommodation debt, owing to the smallness of their capital, on which the amount of interest was very large. They had no credit but what was derived from the responsibility of the stockholders, who were individually liable for all the debts. The business of the company was unprofitable, and but little prospect of its being remunerative for a long time. The value of the capital stock was nominal. The claim of $55,000 made in this bill was never mentioned to me by James or his assignee during the negotiations for a settlement, nor at the time of the settlement, nor at any other time.

148 In answer to the thirty-third direct interrogatory, he saith: I annex a copy of the charter, marked "I." They had not complied with the provisions of said laws, and consequently the stockholders were individually liable for all the debts of the company.

In answer to the thirty-fourth direct interrogatory, he saith: I know of nothing.

Cross-examination:

In answer to the first cross-interrogatory, the deponent saith: I am a stockholder in said company, and have been one from the organization of it. At the beginning, my interest was one-half of twenty-five shares. After the settlement with Frieze, I acquired a half interest in twelve more shares. On the 5th of February, 1856, I bought thirty shares.

In answer to the second cross-interrogatory, he saith: I will do so.

In answer to the third cross-interrogatory, he saith: I am.

GEO. W. CHAPIN.

Sworn to and subscribed before the subscriber, a U. States commissioner within and for said Rhode Island district, also acting under the agreement of counsel for both parties in said suit, as aforesaid; which said agreement was duly filed in the clerk's office of said court, on the 18th day of April, 1861; completed the deposition of said witness on the 7th and 21st days of May, A. D. 1861. Exhibits D, E, and F, referred to in that portion of the deposition taken by Joseph S. Pitman, esq., were annexed to the same by the subscriber. The replies of said deponent to the interrogatories upon which he was examined by me were reduced to writing by me in his presence, and by him signed in my presence.

JAMES H. PARSONS,
U. S. Commissioner.

Commissioner's fees, $9.00.

Annexed to the deposition of Geo. W. Chapin by me,

J. S. PITMAN,
Commissioner.

A.

GEORGE W. CHAPIN,
Treas. A. D. Mill:

DEAR SIR: A combination of circumstances compels me to lay the following before you, viz: I must have in some form, at an

149 early day, about seventy five thousand dollars for six, eight, and twelve months, to enable me to go on with my contract; otherwise, I may be compelled to stop until such time as my affairs can be satisfactorily arranged. It is not for the want of property that compels me to make this request, but it is for the want of money. It is in the power of the company, and for their interest, to render me immediate

assistance at this time. A definite answer is respectfully requested at the earliest possible moment.

Yours, truly,

CHAS. T. JAMES.

PROVIDENCE, *July 28th*, 1851.

Annexed to the deposition of Geo. W. Chapin by me,

J. H. PITMAN,
Commissioner.

B.

This agreement, made this first day of August, in the year of our Lord one thousand eight hundred and fifty-one, by and between Hill, Carpenter & Co., the Globe Printing Company, all of Providence, in the State of Rhode Island; Hoyt & Tillinghast, of the city of New York; Hacker, Lea & Co., of the city of Philadelphia; and Dodge, Tucker & Co., of the city of Boston, of the first part, and Charles T. James, of the second part, witnesseth:

That the said parties of the first part have agreed to loan to the said party of the second part the sum of twenty-five thousand dollars in cash, to be paid to him on the execution and delivery of the mortgages and other securities hereinafter named. And they have also agreed to make and deliver to the party of the second part their several notes, of even date herewith, to the amount in all of fifty thousand dollars in sums, and signed by such of the parties of the first part, as they may prefer; and which notes shall be payable to the said Charles T. James or order in six months from date, etc.

And they also agree that at the maturity and payment by said James of the said notes they will, at the request of the said James, renew the same for another term of six months.

And the said Charles T. James, the party of the second part, in consideration of the premises, hereby agrees that he will, upon the receipt of said money and notes, give to each of the parties of the first
150 part advancing said money his promissory note for the amount of cash by said party advanced, payable in twelve months after date, with interest. And that he will assume the payment of the notes so given to him as aforesaid, to the amount of fifty thousand dollars; and also of all notes given in renewal of the same, or of any part thereof, and at the maturity thereof will pay the same.

And that he will, on receipt of said money and notes, or of any part thereof, execute and deliver to said parties of the first part, or to such person or persons as they may designate, for their use, one or more mortgages, deeds of trust, or other conveyances, of the real and personal estate hereinafter named, for the purpose of securing the repayment of the said sum of twenty-five thousand dollars, with the interest thereof, and for the indemnity to the said parties of the first part from any loss or damage on account of the notes so given by them for fifty thousand dollars as aforesaid, or of any note or notes given in renewal thereof, or of any part thereof.

And he further agrees that the following real and personal estate shall be included in the mortgages or other conveyances to be given by him, that is to say, all the right, title, and interest of him, the said Charles T. James, in and to the capital stock of the Atlantic De Laine Company, a corporation incorporated by the general assembly of said State of Rhode Island; and in and to all the real and personal estate of the said corporation, whether the same be held by said corporation or by any person or persons in trust for them; and in and to all the real and personal estate held by him, the said James, and the parties of the

first part, and others, either as partners or as tenants in common, or by any other person or persons, in trust for him and the said parties of the first part, and others.

Also, all the real estate of him, the said Charles T. James, situate in the city of Providence, free of all incumbrance, and in the towns of Warwick and Scituate, in said State of Rhode Island.

Also, certain notes, to the amount of fifty thousand dollars, made by the Cannelton Manufacturing Company, in the State of Indiana, and the mortgage given for the security of said notes.

And also, one thousand shares of the capital stock of the East Tennessee Mining and Manufacturing Company.

151 And for the consideration aforesaid the said Charles T. James further agrees that he will procure Alfred R. Fiske, of Lancaster, in the State of Pennsylvania, to write and become a party with him in the contract heretofore made between him and the said parties of the first part and others, bearing date on the first day of January, 1851, in relation to the erection of a factory in North Providence for the manufacture of mouslin de laines, in such manner as that the said Alfred R. Fiske shall become equally bound with the said Charles T. James to the parties named in said contract for the faithful performance of said contract in all its parts.

HILL, CARPENTER & CO.
GLOBE PRINTING CO.,
W. AND G. CHAPIN, *Agents.*
HOYT & TILLINGHAST.
HACKER, LEA & CO.
DODGE, TUCKER & CO.,
By GEO. W. CHAPIN.
CHAS. T. JAMES.

Witness:
GEORGE W. MUNRO.

Annexed to the deposition of Geo. W. Chapin by me.

J. S. PITMAN,
Commissioner.

C.

DEAR SIR:

I propose to pay you, as trustee	$75,000
As treasurer, for money advanced, &c., &c	25,000
One hundred thousand dollars	$100,000

Conditions.

First, that the mortgages be discharged.

Second, that all lien (if any) by the company on any property in which I have an interest be discharged.

Third, that whatever sum, on a full and satisfactory settlement between me and the company, be found due from me to said company, shall be paid by my individual notes in two equal payments of one and two years.

Yours, in haste,

CHAS. T. JAMES.

GEO. W. CHAPIN, Esq.,
NEW YORK, *April 10th*, 1852.

152 Annexed to the deposition of George W. Chapin by me,

JAMES H. PARSONS,
U. S. Commissioner.

D.

PROVIDENCE, *February* 15, 1853.

GEO. W. CHAPIN, Esq.,
Trustee for Hill, Carpenter & Co. and others,
and Treas. Atlantic De Laine Company:

DEAR SIR: I feel it my duty to demand of you a statement of the condition, standing, and accounts of the Atlantic De Laine Company, so that I may be able to represent the De Laine stock, &c., which you have advertised, as trustee, to be sold on the 25th and 26th insts., in its true light and value, and make it sell for what it is worth.

Very truly, yours,

L. B. FRIEZE,
Assignee of Charles T. James.

Annexed to the deposition of Geo. W. Chapin by me,
JAMES H. PARSONS,
U. S. Commissioner.

E.

Statement of the Atlantic De Laine Co., January 1, 1853.

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

Credit.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James, contract-account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
Delaines, cassimeres, on hand	149,516 74
Balance	70,365 53
	$789,541 55

153 I would state our directors estimate that $50,000 or more of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

GEO. W. CHAPIN,
Treasurer.

PROVIDENCE, *Feb.* 26, 1853.

Annexed to deposition of Geo. W. Chapin by me.
JAMES H. PARSONS,
U. S. Commissioner.

F.

PROVIDENCE, *Feb.* 26, 1853.

Mr. L. B. FRIEZE, *Assignee:*

Herewith you have a statement of the affairs of our company. If you wish for any information more, and will state it in writing, I will furnish it if in my power.

Very truly,

GEO. W. CHAPIN, *Treasurer.*

Annexed to the deposition of Geo. W. Chapin by me.

JAMES H. PARSONS,
U. S. Commissioner.

H.

We, the undersigned, Lyman B. Frieze, assignee of Charles T. James, of Providence, in the State of Rhode Island, and the Atlantic De Laine Company of said Providence, in consideration of thirteen thousand five hundred dollars, paid by William Mason & Company, of Taunton, in the county of Bristol, and commonwealth of Massachusetts, do hereby agree and covenant, and jointly and severally bind ourselves, to transfer and deliver, by good and valid conveyance, within six months from the date hereof, to the said William Mason & Company, one hundred and thirty-five shares of the capital stock of the American Cannel-Coal Company, of Cannelton, in the State of Indiana, or to pay the said William Mason & Co. legal interest upon said above-mentioned sum from this date till such time as said shares shall be transferred and delivered or said sum paid as aforesaid.

154 The above agreement is made upon the understanding and condition that the said William Mason & Company shall, as soon as practicable, transfer and deliver all the machinery necessary to complete their contract with said Charles T. James for the said Atlantic De Laine Company, reference to be had to the agreement made on the tenth day of October last between said William Mason & Company and the said Lyman B. Frieze, assignee, as aforesaid, for a more particular description.

Witness our hands this twentieth day of January, in the year eighteen hundred and fifty-two.

L. B. FRIEZE,
Assignee of Charles T. James.
ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treasurer.*

In presence of—
B. S. BOWEN.

The word "per" stricken out on the eighteenth line by mutual consent.

L. B. FRIEZE, *Assignee.*
ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treasurer.*

BOSTON, *April* 18, 1859.

In consideration of the sum of six thousand five hundred and fifty dollars paid by the Atlantic De Laine Company, through Geo. W. Chapin, their treasurer, in full satisfaction of the preceding contract, it is agreed that the same is fully settled, satisfied, and discharged; and the

suits heretofore brought upon the same shall be discontinued without costs to either party.

WILLIAM MASON & CO., AND
GEORGE B. UPTON,
WILLIAM E. COFFIN,
OAKES AMES,
Assignees of Wm. Mason & Co.

By their attorney, E. R. HOAR.

The foregoing settlement is approved by us,

GEORGE B. UPTON,
WM. E. COFFIN,
OAKES AMES,
Assignees of Wm. Mason & Co.

155 Annexed to the deposition of George W. Chapin by me,

JAMES H. PARSONS,
U. S. Commissioner.

G.

Charles T. James, contract-acct. in acct. with the Atlantic De Laine Co.

1851.		Dr.	Cr.
Dec. 31.	To building various drains from the mill, as per plat on file, drains in black ink being chgd. C. T. James, drains in red ink being chgd. construction-acct ...	287 78	
	To coal used by engine in driving shafting, from Aug. 4 to Sept. 22, 1851, 42½ tons, as cash, Aug. 4, 1851; 85 tons having been used for both engines during that time, costing $397.80....	198 90	
	To coal used as above, from Sept. 22 to Nov. 6, 1851, when large engine started, 69½ tons, as cash, Jan. 30, 1852; 139 tons having been used as above during that time, costing $637.22	318 61	
	To 1 wrench in Prov. Machine Co.'s bill, approved by A. B. Fisk, pd. Dec. 11, '51	18 00	
	To 1 lap-apron, G. & D. Taylor & Co. acct., approved by A. B. Fisk, pd. Oct. 1, '51.....		20
	To amount labor paid Wilkinson, Wilbur & Sargent, and their hands, from July 28 to Aug. 16	127 05	
	To amount labor, paid same, from Aug. 16 to Sept. 13.....	364 18	
	To amount labor paid Wilbur & Sargent, and their hands, from Sept. 13, to Oct. 11.....	374 00	
	To amount labor paid Wilkinson, Wilbur & Sargent, and their hands, from Oct. 11 to Nov. 8	402 08	
	To amount labor paid Wilbur and his hands, from Nov. 8 to 15	42 71	

	To amount labor paid Sargent and his hands, from Nov. 8 to 22	112 54		
156	To amount labor paid Wilkinson and his hands, from Nov. 8 to Dec. 8	114 25		
	By amount paid Geo. R. Young for 26½ ds. work as engineer, at 7*s*			30 92
	By amount paid John Lynch for 18 ds. work as engineer, at 7 *s*			21 00
	By amount 1,754 lbs. coal, at $6, Sept. 6, 1851			5 25
	By amount brick and mortar furnished for oven in Sampson House			14 60
	By amount sundries paid at mill for labor and material as by bill on file: Labor and material on store-house, $1,323.22; on dye-house, $580.05			1,903 27
	Lumber and mortar for coal-shed, $72; material and labor on Place House, $41.29			113 29
	Labor, excavating extra for office-cellar, $44; materials for privy, $9.34			53 34
	Labor, grading and levelling around mill, $519.18; labor and materials, cassimer dpt., $172.18			691 36
1852.				
Jan. 14.	To amt. paid Brigham & Pierce, bill 78 wool-baskets, 1	197 00		
Mar. 31.	To amt. paid Pearce & Luther, bill, painting boxes, 27	103 03		
	To amt. paid Lemuel Angell, collector, bill for tax assessed August '51, in N. Prov. on $75,000, with interest	169 12		
April 24.	To amt. paid Burr & Shaw, bill, hose and pipes	259 74		
April 30.	To amt. paid Phenix I. Foundry, bill for waste-gates, shafting, &c., 29	59 48		
May 29.	To amt. paid Pearce and Luther, 3 bills, painting, $62.63; $76.07; $117.30	256 00		
	To amt. paid Prov. Gas Co., bill for extra meter and fixings, 28	51 60		
	To amt. paid labor and material used about engine at mill, per Thurston, Greene & Co.'s bill	720 84		
1852.				
June 12.	To amt. paid Thurston, Greene & Co., bill, various machines for mill, 10	213 67		
157 June 30.	To amt. paid Joseph R. Brown, bill, 1 watch-clock 25	44 00		
	To amt. paid Pope & Cutter, bill, fitting up watch-clock	31 00		
	By amt. paid to P. P. Kimball, Sept. 19, '51			15 00
	By amt. paid to wool-packers, Sept. 24, '51			24 00
	By amt. paid, per A. Winsor's bill, Aug. 8, '51			29 48

Aug. 25, '51

	To amt. of Albert Dailey's bill, in part, as per our bill on file	501 02
	To amt. sundries of Brown & Baker, as per bill, cash Aug. 6, '52	173 41
	To amt. sundries of A. Anthony & Co., as per bill, cash June 30, '52	78 00
	To amt. sundries of N. H. Bradford & Co., as per bill, cash Mar. 13, '52	95 86
	To amt. sundries of Wm. Earle, as per bill, cash June 30, '52	23 91
	To amt. sundries of H. W. Slocum, as per bill, cash May 22, '52	32 76
	To amt. sundries of James Eames, as per bill	99 81
	To amt. sundries of Rose & Farnum, as per bill, cash June 30	29 66
	To amt. sundries of G. & D. Taylor & Co., as per bill, cash Sept. 5, '52	25 00
	To amt. sundries of W. Coleman & Sons, as per bill, cash June 30, '52	5 60
	To amt. sundries of Calder & Phillips, as per bill, cash June 30, 52	73 76
	To one-half amt. paid by us for horse-hire, to April 24, cash Mar. 31, '52	149 26
	To amt. work in smithy, as per acct. rendered	531 08
	To amt. paid P. Mathewson Stone, for engine, cash May 14, '52	114 00
	To amt. paid A. & W. Sprague, for blanketing, cash June 30, '52	5 00
	To amt. paid Wm. Hudson, travelling-expenses, cash June 30, 52	11 30
	To amt. paid Lewin & Fiske, labor on partition for dressing-room, cash Feb. 15, '52	19 50
158	To amt. paid Mrs. Reynolds & Hargraves making beam-cloths, cash May 8, '52.	9 17
	To amt. paid Mrs. Richardson, board of engine-hands, May 8, 52	36 00
	To amt. paid A. R. Fiske, Apr. 30, '52	75 00
	To amt. paid Franklin Mfg. Co., I. Waterman & Co., and D. Hunt, bills, work for clearing machinery, Dec. 1, '51	39 21
	To amt. paid Rice & Congdon, speeder belting, Nov. 18, '51	6 00
	To amt. sundries of the following persons, approved by A. R. Fiske, Jan. '52:	
	A. Anthony & Co., picker leather, Aug. 12, '51	8 47
	N. A. Eddy, 47 m. tacks, $3.53; tools and screws, $3.29; screws, files and locks, $3.51, Oct. 1, '51	10 33
	S. A. Briggs, oil-drippers, Sept. 8, '51, Feb. 23, '52	63
	P. Grinnell & Sons, emery and files, Sept. '51	1 93

	Wm. Earle, cotton duck, Oct. 1, '51		9 00	
	To amt. Prov. Machine Co., bill, settled April 6, '52, less the item of commission chgd. Feb. 24, $111.72 and interest, $2.24—$113.96; whole bill, $1,060.23, less $113.96		946 27	
June 30.	To amount C. & H. S. Peirce, bill for baskets, January 15, '52		40 00	
	To amt. Thurston, Greene & Co., bill, tools for engine, June 9, '52		213 67	
	To amt. Globe Printing Co., bill, bagging for covering steam-boiler		46 80	
	To amt. paid for insurance on mill and machinery, on $53,000 for 60 d'ys from July 30, '51. Cash, Aug. 18, '51		198 50	
	To amt. paid for insurance on do. on $72,000 from Sept. 30, '51, to Feb. 1, '52, at 1¼ p'r ct. p'r ann., average Oct. 25, '51		300 00	
Sept. 13.	To amt. Thurston, Greene & Co. bill, tools for engine, charged June 30, '52, the same having been previously charged in acct. Cash, June 9, '52			213 67
159 Oct. 30.	To amt. paid N. A. Eddy, bill, hardware	8	57 74	
	To amt. paid A. H. Manchester, bill, force-pump	16	122 94	
Nov. 30.	To amt. paid Amoskeag Manfng. Co., bill, sundries	22	597 92	
	To amt. paid freight plank from Boston		3 00	
Dec. 31.	To amt. paid D. C. Murdock, bill, drop wire box, &c		58 00	
	To amt. paid Howard & Davis, bill, clock and scales		64 00	
	To amt. sundries in Wm. Mason & Co. bill, as pr. mem. on file. Cash Mar. 1	53	802 07	
	To amt. Thurston, Greene & Co. bill, labor and materials on engine		3,614 88	
	To amt. A. De Laine Mill, payments for labor, lumber, bricks, tools, &c., as pr. mem. on file		1,967 27	
	To amt. sundry items in Prov. Steam & Gas Pipe Co.'s bills for articles used for fitting up roller-room		80 92	
	To amt. Prov. Steam and Gas Pipe Co.'s bill, labor at mill, &c., from Mar. 22, to May 22, '52		253 04	
1853. Jan. 31.	To amt. paid Lewin, Kinyon & Co.'s bill, work on engine	29	382 39	
Feb. 28.	To amt. Thurston, Greene & Co. bill, boiler, Feb. 4, cash		3,243 14	
March 31.	To amt. paid Edward Smith, bill, mule-regulator	15	340 00	

	To amt. paid Calder & Phillips' bill, labor, &c.....24	122 82	
April 21.	To amt. Prov. Steam and Gas Pipe Co., bill of March 6, '52, for labor and supplies furnished for the mill.....	666 54	
April 30.	To amt. paid D. E. Carpenter, bill, carrying boiler to mill 18	99 67	
		$20,852 03	$3,115 28

160 Annexed to deposition of George W. Chapin by me,
JAMES H. PARSONS,
U. S. Commissioner.

I.

Charter.

State of Rhode Island and Providence Plantations.

In general assembly, May session, A. D. 1851.

An act to incorporate the Atlantic De Laine Company.

It is enacted by the general assembly as follows:

SECTION 1. Josiah Chapin, Charles T. James, Paris Hill, Joseph Carpenter, and George W. Chapin, their associates, successors, and assigns, are hereby constituted and created a body corporate and politic, by the name of "Atlantic De Laine Company," for manufacturing and other purposes, and by that name shall have perpetual succession, and are made able and capable in law to have, possess, purchase, receive, hold, enjoy, and retain unto them, their successors and assigns, estates of every kind, real, personal, or mixed, and the same to manage, let, lease, assign, grant, bargain, sell, alien, convey, and dispose of at pleasure; to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended against, in all courts of law and equity, and before all tribunals whatever; to make, have, and use a common seal, and the same to break, alter, and renew at pleasure; and shall also have power to make, establish, and put in execution such by-laws and regulations, not contrary to law, as they may deem necessary or convenient for the government of said corporation, and the management of their property and concerns, and the duties, services, and employments of their officers and agents, and the same to change, alter, or amend; and generally to do and execute all acts, matters, and things which may be necessary to carry into effect the powers and privileges herein granted.

SEC. 2. The capital stock of said corporation shall not exceed five hundred thousand dollars, to be fixed in amount by vote of the company, and to be divided into shares of one thousand dollars each. The shares in said capital stock are hereby declared to be personal estate, and shall be transferred by bill of sale, which shall be recorded in the office of the treasurer of the corporation, in such books as he shall provide for that purpose; provided, however, that no stockholder, who may wish to dispose of his stock, shall transfer, in manner aforesaid, any share or shares of the capital stock of said corporation, without
161 first giving the refusal of the same to the corporation at the price for which he is willing to sell, and provided, also, that the shares

in said capital stock shall not be liable to assessment, after the capital stock, so fixed in amount as aforesaid, has been paid in, except in equal proportions, and by the consent of the stockholders owning at least three-fourths of the shares of the capital stock of the corporation.

SEC. 3. There shall be an annual meeting of the stockholders holden in Providence on the first Wednesday of February, for the choice of a president, treasurer, and board of directors, consisting of five, and such other officers as they may deem necessary or expedient, who shall severally hold their offices for one year, and until others shall be elected and qualified to act in their stead, unless sooner removed by death, or by a vote of the corporation. The treasurer, who shall reside in the county of Providence, shall, before entering upon the discharge of his duty as such, give bond, with surety in such sum as the board of directors shall designate, for the faithful discharge of his duty as treasurer, which bond shall be deposited with the president. And if the corporation should fail to elect their officers on the day appointed for their annual election, it shall be lawful for them so to do at any subsequent legal meeting, to be holden within one year, notice of the same to be given in the same manner as shall be prescribed for calling special meetings. Special meetings may be called at any time by the treasurer, and in case of his absence, neglect, inability, or refusal, by stockholders holding one-fifth of the shares of the capital stock, and shall be notified in the manner to be prescribed by the by-laws of the corporation. All or any business of the corporation may be transacted, and acted on, at any legal meeting thereof, and each stockholder, at all meetings of the corporation, shall in person, or by proxy duly authorized in writing, be entitled to one vote for each and every share by him owned, not exceeding fifty shares, and to one additional vote for every ten shares over and above said fifty shares, and the holders of one hundred shares, with the president, or treasurer, shall constitute a quorum.

SEC. 4. The stock or shares of each and every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to said corporation, whether over-due, or due at a day future, and whether the same shall arise from as-
162 sessments or installments, or in any other manner; and in case any stockholder shall refuse or neglect to pay such debt or demand to the treasurer thereof within thirty days after the same shall become due and payable, then it shall be lawful for the treasurer to sell at public auction the share or shares of such delinquent stockholder, or so many thereof as may be necessary to satisfy the debt or demand, with all incidental expenses, first giving notice of the time and place of sale, with the sum due from such stockholder for which his stock shall be pledged or liable, at least twice a week for sixty days prior to the day of sale, in one of the newspapers printed in Providence; and such sale shall be a legal transfer of the share or shares so sold, and a certificate thereof, signed by the treasurer of said corporation, shall be issued to the purchaser or purchasers thereof, and shall be recorded in the office of the treasurer, in the books of the company, provided for that purpose by him, and thereupon such purchaser or purchasers shall be considered to all intents and purposes the proprietor of such share or shares; and the balance of the money arising from the sale of such share or shares, after discharging the debt or demand for which the same was pledged or liable, with the expenses, shall be paid to the delinquent proprietor, or to his assigns; and provided, that if the proceeds of such sale be not sufficient to discharge such debt or demand, the corporation may have their action against the debtor for the balance due.

SEC. 5. Said corporation shall have a place of business in the city of Providence; and in all proceedings in law or equity in which said company shall be a party, the leaving an attested copy of the writ, summons, or other process, with the treasurer of said corporation, or with some agent of said corporation, at such place of business, shall be a sufficient service thereof.

SEC. 6. The validity of this charter shall not be impaired by the omission of the stockholders to hold their annual meeting on the day hereinbefore, in section third, appointed.

SEC. 7. The above-named George W. Chapin is hereby authorized to call the first meeting of the stockholders, whenever he shall deem it expedient, for the election of officers and organization under this charter, and for the transaction of any other business of the corporation, by giving notice of the time and place thereof to the persons named in the first section of this act; and the officers so elected shall continue
163 in office until the first annual meeting, as hereinbefore named, and until others are elected in their stead.

SEC. 8. The liability of the members and officers of this corporation for the debts of the company shall be fixed and limited by, and the corporation, its members and officers, shall in all respects be subject to, the provisions of an act entitled "An act in relation to manufacturing corporations," passed at the June session of the general assembly, A. D. 1847.

True copy. Witness—

ASA POTTER, [L. S.]
Secretary of State.

Interrogatories to Geo. W. Munroe.

Interrogatories to Geo. W. Munroe on the part of the respondent.

1. What is your age, residence, and occupation?
2. State whether or not, to your recollection, you were ever requested by George W. Chapin to obtain from L. B. Frieze any statement or account of the affairs of the Atlantic De Laine Company, which said Chapin had furnished to said Frieze.
3. State whether or not you called, to your recollection, upon said Frieze or said Parkhurst for such statement or account.
4. Read the paper herewith presented, marked "A," and state whether, to your recollection, you had any such conversation with William H. Parkhurst as is therein related; and if such conversation had taken place would you, or not, have been likely to recollect it?

A.

In answer to the twenty-second interrogatory, he saith: While the statement was in my possession I was called upon by George W. Munroe, who was then a clerk in the employ of Mr. Chapin. He came into the office and inquired for Mr. Frieze. I said, "He is not in; is there anything I can do for you?" He said, "Mr. Chapin gave him a
164 paper a day or two since, and he wants it." I asked him what kind of a paper it was. He said, "A statement, or something of that kind. Do you know anything of it?" I said "Yes." "Do you know where it is?" asked Mr. Monroe. I replied that it was in my possession; "what does Mr. Chapin want of it?" The reply was, "Mr. Chapin wanted to correct some errors there is in it." My reply was,

"Mr. Chapin has a copy of it; if he has made any errors, let him make out a correct one, and we will see how the two compare. This one I cannot give up. My orders are to keep it, and give it up to no one." The time was, I think, in the month of February, 1853, before the sale of the house of Mr. James.

Cross-interrogatories.

Cross-interrogatories to George W. Munroe, on the part of the complainant:

1. Did George W. Chapin send you to William H. Parkhurst to get an account or statement rendered by said Chapin to Lyman B. Frieze, assignee; and, if yea, did said Chapin give any reason for sending you for the same? Did he or not say it was erroneous?
2. Have you or not stated to any person that said Chapin told you there was an error in said account or statement?
3. Did you not have some conversation with Wm. H. Parkhurst about an account or statement of some kind that had been furnished by said Chapin to said Lyman B. Frieze, assignee?
4. Did you not know that an account, or statement purporting to be an account or statement of the affairs of the De Laine Co., had been delivered by said Chapin to said Frieze?
5. *Was* you or not assistant book-keeper for said Chapin; and, if yea, did or not the books of said Chapin, as treasurer of said company, show the actual condition of said company's affairs at that time?
6. Have you or not said to any person that you called on said Parkhurst for said account or statement at the request of said Chapin?

165 *Deposition of George W. Munroe.*

Deposition of George W. Munroe, who, being duly sworn, doth depose and say as follows:

In answer to the first direct interrogatory, he saith: My age is thirty-one; residence, Providence; and I am engaged in the commission business and brokerage.

In answer to the second direct interrogatory, he saith: Never to my remembrance.

In answer to the third direct interrogatory, he saith: No, sir.

In answer to the fourth direct interrogatory, he saith: My answer would be to that, that if I had known of the existence of such a statement I think I should have remembered it. I have no remembrance of the conversation.

Cross-examination:

In answer to the first cross-interrogatory, he saith: I have no remembrance of having been sent by Mr. Chapin to Mr. Parkhurst for a statement or account of the standing of the Atlantic De Laine Co.

In answer to the second cross-interrogatory, he saith: No, sir.

In answer to the third cross-interrogatory, he saith: None to my remembrance.

In answer to the fourth cross-interrogatory, he saith: I did not.

In answer to the fifth cross-interrogatory, he saith: I was assistant book-keeper and clerk. The books of the company regularly showed the assets and liabilities of the concern. Once in six months, June 30th

and December 31st, an inventory of stock was taken and the books balanced.

In answer to the sixth cross-interrogatory, he saith: Never to my knowledge.

GEORGE W. MONRO.

Sworn to and subscribed before me this fourteenth day of May, A. D. 1861.

JAMES H. PARSONS,
U. S. Commissioner.

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167 *Interrogatories to Abraham Payne.*

Interrogatories to be propounded to Abraham Payne, esq., on the part of the defendants:

1. Whether or no you were the attorney of the plaintiffs in the suit in which judgment was rendered, of which judgment a certified copy is hereunto annexed, marked "A."

2. Whether or no the agreement hereto annexed, marked "B," was signed by you as the attorney of Higgins & Sons, and by the said Charles T. James?

3. If you say said agreement was signed by you as aforesaid, and the said Charles T. James, please state whether or no the said James rendered any consideration for the agreement on the part of Higgins & Sons except the promise of James, as expressed in the above agreement. Please, also, state what authority you had from said Higgins & Son to sign said agreement for them.

4. Whether or no the said Charles T. James has ever paid anything on account of said judgment?

R. W. GREENE,
For Defendants.

EXHIBIT A.

At a circuit court of the United States, began and holden at Providence, within and for the district of Rhode Island, on the fifteenth day of November, 1854, before the honorable Benjamin R. Curtis, associate justice, Hon. John Pitman, district judge.

WILLIAM HIGGINS & SONS
vs.
CHARLES T. JAMES.

Be it remembered, that at the June term of said court, A. D. 1853, the following writ and declaration were filed:

168 *Writ.*

RHODE ISLAND DISTRICT, *sc:*

[SEAL.] The President of the United States of America to the marshal of said district, or to his deputy, greeting:

We command you to summon Charles T. James, of Providence, in the county of Providence and State of Rhode Island, a citizen of said State of Rhode Island, senator, alias gentleman, if he may be found in your district, to answer the complaint of James Higgins, John Higgins, and Henry Higgins, all of Salford, in the county of Lancashire, in England, in the kingdom of Great Britain, and all subjects of the Queen of that kingdom, merchants in business under the firm and style of William

Higgins & Sons, at the next circuit court to be holden at Newport, within and for the Rhode Island district, on the 15th day of June next ensuing the date hereof, in an action of the case: for that the said defendant hath not kept and performed his promises to the plaintiffs made, as by the declaration to be filed in court will be fully set forth, to the damage of the plaintiffs twenty thousand dollars.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness the Hon. Roger B. Taney, our Chief-Justice, at Providence, this 7th day of May, A. D. 1853.

JOHN T. PITMAN, *Clerk.*

A. PAYNE, *Plaintiffs' Surety for Defendant's cost.*

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island District, sc:

MAY 10*th*, 1853.

Made service of the within writ, by reading the same in the presence and hearing of Charles T. James, and delivering in his hands a true and attested copy hereof, as commanded.

CHARLES E. NEWELL,
Dep. U. S. Marshal.

Service, $2.00; copy, 50; Travel, 3.00—$5.50.

169 *Declaration.*

RHODE ISLAND DISTRICT, *sc.:*

Circuit court of the United States, June term, A. D. 1853.

James Higgins, John Higgins, and Henry Higgins, all of Salford, in the county of Lancashire, in England, in the kingdom of Great Britain, and all subjects of the Queen of that kingdom, merchants in company under the firm and style of William Higgins & Sons, complain that Charles T. James, of Providence, in the county of Providence, in the State of Rhode Island, and a citizen of said State of Rhode Island, senator, alias gentleman, summoned by the marshal in an action of the case for that defendant, at said Salford, to wit, at said Providence, on the 6th day of September, A. D. 1851, was justly indebted to the plaintiff in the sum of thirteen thousand three hundred and eighty-nine dollars and eighty-nine cents, by book account, according to the account herewith filed, and being so indebted he, the said defendant, then and there, in consideration thereof, assumed on himself and to the plaintiff promised to pay them the same on request, and was there, on the same day, requested to pay the same, and then and there became liable to pay the same with interest thereon from that day.

And also, for the defendant at the place aforesaid, on the 7th day of May, A. D. 1853, being justly indebted to the plaintiff in one other sum of twenty thousand dollars, for certain goods, wares, and merchandise there, before that time, sold and delivered by the plaintiff to the defendant at the special instance and request of the defendant; and also, for certain work and labor, skill, care, and diligence there, before that time, done, performed, and bestowed by the plaintiff for the defendant at the defendant's request, then and there, in consideration thereof, promised the plaintiffs to pay them said sum on request.

And also, for that the defendant, at the place and on the day and

year aforesaid, being justly indebted to the plaintiff in one other sum of twenty thousand dollars, for so much money before that time had and received to the use of the plaintiff; and also, for so much money before that time paid, laid out, and expended to and for the defendant, and at his instance and request, and also for so much money before that time lent and advanced to the defendant by the plaintiff, then
170 and there, in consideration thereof, promised the plaintiff to pay them said sum of money last mentioned on request:

Yet, though requested, the defendant hath not paid said sum or any part thereof, but ever hath refused and still doth refuse to pay the same, to the plaintiff's damage of twenty thousand dollars, as laid in their writ dated the 7th day of May, A. D. 1853: wherefore they sue by their attorney,

ABRAHAM PAYNE.

ACCOUNT REFERRED TO.

Mr. Charles T. James to Williams Higgins & Sons, Dr.

[E. E.]
1851.

May 16, account rendered		£403	4 00
"	ditto	806	7 00
June 7,	ditto	836	10 06
" 27,	ditto	693	15 04
		£2,738	16 10

1851.
September 6.

Mr. Charles T. James to William Higgins & Sons, Dr.

To amount of account rendered $13,389 89

And at the same term was filed the following

Plea.

And said defendant comes and defends the wrong and injury, when, &c., and says that he never undertook or promised in manner and form as the said plaintiffs have in their declaration against him thereof alleged, and in this he puts himself on the country.

By his attorney,

WM. H. POTTER.

And said case being continued from term to term, until the present November term, 1854, it is then called for trial; whereupon the following agreement is entered:

Agreement.

The amount for which judgment is to be entered in the case Hig-
171 gins & Son vs. C. T. James is fifteen thousand eight hundred and sixty-seven and four one-hundredths dollars, $15,867.04.

CHARLES T. JAMES,
Per L. B. FRIEZE,
Attorney.

A. PAYNE,
Attorney for Plaintiffs.

Higgins & Sons, at the next circuit court to be holden at Newport, within and for the Rhode Island district, on the 15th day of June next ensuing the date hereof, in an action of the case: for that the said defendant hath not kept and performed his promises to the plaintiffs made, as by the declaration to be filed in court will be fully set forth, to the damage of the plaintiffs twenty thousand dollars.

Hereof fail not, and make true return of this writ with your doings thereon.

Witness the Hon. Roger B. Taney, our Chief-Justice, at Providence, this 7th day of May, A. D. 1853.

JOHN T. PITMAN, *Clerk.*

A. PAYNE, *Plaintiffs' Surety for Defendant's cost.*

Marshal's return.

UNITED STATES OF AMERICA,
Rhode Island District, sc:

MAY 10*th*, 1853.

Made service of the within writ, by reading the same in the presence and hearing of Charles T. James, and delivering in his hands a true and attested copy hereof, as commanded.

CHARLES E. NEWELL,
Dep. U. S. Marshal.

Service, $2.00; copy, 50; Travel, 3.00—$5.50.

169 *Declaration.*

RHODE ISLAND DISTRICT, *sc.:*

Circuit court of the United States, June term, A. D. 1853.

James Higgins, John Higgins, and Henry Higgins, all of Salford, in the county of Lancashire, in England, in the kingdom of Great Britain, and all subjects of the Queen of that kingdom, merchants in company under the firm and style of William Higgins & Sons, complain that Charles T. James, of Providence, in the county of Providence, in the State of Rhode Island, and a citizen of said State of Rhode Island, senator, alias gentleman, summoned by the marshal in an action of the case for that defendant, at said Salford, to wit, at said Providence, on the 6th day of September, A. D. 1851, was justly indebted to the plaintiff in the sum of thirteen thousand three hundred and eighty-nine dollars and eighty-nine cents, by book account, according to the account herewith filed, and being so indebted he, the said defendant, then and there, in consideration thereof, assumed on himself and to the plaintiff promised to pay them the same on request, and was there, on the same day, requested to pay the same, and then and there became liable to pay the same with interest thereon from that day.

And also, for the defendant at the place aforesaid, on the 7th day of May, A. D. 1853, being justly indebted to the plaintiff in one other sum of twenty thousand dollars, for certain goods, wares, and merchandise there, before that time, sold and delivered by the plaintiff to the defendant at the special instance and request of the defendant; and also, for certain work and labor, skill, care, and diligence there, before that time, done, performed, and bestowed by the plaintiff for the defendant at the defendant's request, then and there, in consideration thereof, promised the plaintiffs to pay them said sum on request.

And also, for that the defendant, at the place and on the day and

year aforesaid, being justly indebted to the plaintiff in one other sum of twenty thousand dollars, for so much money before that time had and received to the use of the plaintiff; and also, for so much money before that time paid, laid out, and expended to and for the defendant, and at his instance and request, and also for so much money before that time lent and advanced to the defendant by the plaintiff, then
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By his attorney,

WM. H. POTTER.

And said case being continued from term to term, until the present November term, 1854, it is then called for trial; whereupon the following agreement is entered:

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171 gins & Son vs. C. T. James is fifteen thousand eight hundred and sixty-seven and four one-hundredths dollars, $15,867.04.

CHARLES T. JAMES,
Per L. B. FRIEZE,
Attorney.

A. PAYNE,
Attorney for Plaintiffs.

Judgment.

Whereupon it is considered by the court here that the plaintiffs have and recover of the defendant the sum of fifteen thousand eight hundred and sixty-seven dollars and four cents. Debt and costs of court taxed at

EXHIBIT B.

In consideration that Charles T. James will pay twenty-five per cent. upon the amount of a judgment against him in favor of Higgins & Son, with interest upon such twenty-five per cent. from the date of said judgment until paid, within three years from this date, I agree to accept the same in full settlement and discharge of said judgment, and in the mean time I agree not to enforce said judgment or any execution issued thereon against said James or his property.

Said judgment was for $\$15{,}867\frac{84}{100}$ and rendered Jan'y 19, 1855, in the circuit court of the United States for the district of Rhode Island.

A. PAYNE,
Atty. for Higgins & Son.

In consideration of the above I hereby agree to pay the amount above named within the time above named.

CHAS. T. JAMES.

Deposition of Abraham Payne.

Deposition of Abraham Payne, esq., of the city of Providence, in said district, who, being duly sworn, doth depose and say as follows in answer to the several interrogatories propounded to him:

1. First. In answer to the first interrogatory, he saith: I was.

172 2. Second. In answer to the second interrogatory, he saith: It was.

3. Third. In answer to the third interrogatory, he saith: He rendered no consideration except said promise. Messrs. Higgins & Sons, directly and through their friend, Philip Allen, esq., authorized me to discharge said claim and the judgment founded thereon for twenty-five per cent. of its amount, General James to pay my charges for services, commissions, &c. I submitted the proposition to General James, stating to him that my charges would be five hundred dollars. He agreed to the terms, and some time afterwards paid me the sum of five hundred dollars. He obtained from me, from time to time, an extension of the time within which he might pay the twenty-five per cent. upon the amount of the judgment in the discharge thereof, and finally obtained the extension provided for in the written agreement aforesaid. My authority from Higgins & Sons was simply to discharge the claim and judgment upon receiving from General James twenty-five per cent. of its amount and the amount of my charges in the case against them.

4. Fourth. In answer to the fourth interrogatory, he saith: He has paid nothing on account of the judgment; he has paid my charges against Higgins & Sons in the case.

ABRAHAM PAYNE.

Sworn and subscribed before me this 31st day of October, A. D. 1861.

JAMES H. PARSONS,
U. S. Commissioner.

Witness fees, $1.55.

Interrogatories to Thos. A. Jenckes.

Interrogatories to be propounded to Thomas A. Jenckes, esq., a witness to be examined on the part of the respondents.

1. What is your age, residence, and occupation?

2. State whether you are one of the assignees of Hill, Carpenter & Co.

3. State whether or not the assignees of Hill, Carpenter & Co.
173 received, as a part of the assets of the assignors, a claim against Charles T. James. If so, state the nature and amount of such claim, whether the same was by note, book account, or otherwise, and when the same was contracted.

4. State whether the said assignees have made any attempts to collect said claim of said James; whether or not they have prosecuted the same to a judgment. If so, where, in what court, whether said claim is now outstanding against said James; and, if so, in what form. If you say that the same is not outstanding, please state when and how the same was paid or discharged, upon what terms, and for what consideration.

5. State all the facts within your knowledge, or which, as assignee of Hill, Carpenter & Co., you have any means of knowledge, as to any debt in any form due or owing from Charles T. James at and before his assignment to Lyman B. Frieze, and as to the present form or condition of the same, and as to what has been done in relation to the same by said James, or Hill, Carpenter & Co., or their assignees.

6. State any other matter or thing within your knowledge in relation to the subject inquired of in the previous interrogatories.

R. W. & T. C. GREENE,
PAYNE & COLWELL,
Solicitors for the Atlantic De Laine Co. and for Geo. W. Chapin.

Deposition of Thomas A. Jenckes.

Deposition of Thomas A. Jenckes, esq., of Providence, in said district, who, being duly sworn, doth depose and say as follows, in answer to the several interrogatories propounded to him:

1. First. In answer to the first interrogatory, he saith: Forty-two; Providence; counsellor at law.

2. Second. In answer to the second interrogatory, he saith:
I am.

3. Third. In answer to the third interrogatory, he saith:
They had a claim against Charles T. James, upon notes or other paper, to the amount of about eight thousand dollars, and the debt was contracted prior to September, A. D. 1851.

4. Fourth. In answer to the fourth interrogatory, he saith:
174 The assignees of Hill, Carpenter & Company obtained judgment against said James on said paper in the court of common pleas for the county of Providence, and said judgment still stands as security for the performance of a contract between said assignees and said James, under which said James is to be discharged from his said liability on the payment of thirty-seven and one-half per cent. of the amount due thereon. The time within which the payment is to be made was fixed by said James and Earl P. Mason, one of said assignees, and I am now unable to state from my own recollection whether the period has or has not expired.

5. Fifth. In answer to the fifth interrogatory, he saith:
I have no knowledge upon the subject inquired of in the interrogatory.
6. Sixth. In answer to the sixth interrogatory, he saith:
I have nothing further to state.

T. A. JENCKES.

Sworn and subscribed before me this ninth day of November, A. D. 1861.

JAMES H. PARSONS.
U. S. Commissioner.

Witness fees, $1.55.

Agreement to file answer of L. B. Frieze.

It is hereby agreed that Lyman B. Frieze, assignee of said complainant and one of the respondents in said cause, may file his answer to the same at any before the entering up of final decree therein, with the same effect as if the same had been filed within the time prescribed by the rules of said court, and without prejudice, in any manner whatever, to his rights and interests, in consequence of any delay in the filing of the same.

Providence, September 1st, 1860.

T. A. JENCKES,
For Complainant.
A. PAYNE,
For De Laine Co.

175 *Answer.*

The answer of Lyman B. Frieze, one of the respondents to the bill of complaint, Charles T. James, complainant:

This respondent, reserving to himself all right of exception to said bill of complaint, for answer thereto saith:

That he admits that on the second day of September, 1851, the said complainant made and executed a deed of assignment of all his property to this respondent, for the benefit of his creditors; that the paper marked "A," annexed to said bill of complaint, is a true copy of said deed of assignment, and that the estate conveyed by said deed was a large amount of real and personal property, situated in the State of Rhode Island and other States; but he does not know, and has not been informed except by complainant's said bill, and cannot state, as to his belief or otherwise, whether the same cost about the sum of eight hundred thousand dollars or not; that possession of such portions of said assigned estate as could be had was taken by said assignee as soon as practicable, and held by him subject to the liens thereon; and that a part of said assigned property consisted of the interest of said complainant in the Atlantic De Laine Mills, one hundred and fifty shares of the capital stock in which, of the par value of one thousand dollars per share, he was subscriber for, but for what portion he was entitled to certificates for respondent does not know, and cannot state, to his belief or otherwise, inasmuch as he is informed that it depended upon the execution of the contract for the building of said mills, not then completed, and upon the debts, for which the stock of each member of said company was held pledged by the provisions of their charter, and upon the paying in of the whole capital stock.

And this respondent, further answering, saith he has been informed,

and believes it to be true, that previous to the date of said assignment, on the first day of January, 1851, as complainant in his bill has alleged, the said complainant entered into a contract with Hill, Carpenter & Co. and George W. Chapin, and said George W. Chapin as attorney for others, whereby the said complainant agreed to erect certain buildings, and to furnish the same with machinery suitable for carrying on the business of said Atlantic De Laine Company; the said complainant agreeing to erect, finish, and put up said buildings and machin-
176 ery for the sum of two hundred and sixty thousand dollars, and your respondent believes the said paper marked "B," annexed to said bill, to be a true copy of the said contract.

And this respondent, further answering, says that he has been informed, and believes it to be true, that the parties entered into an agreement to procure an act of incorporation, under the style of the Atlantic De Laine Co., with the capital and the same divided into shares as in said bill is alleged, and that said complainant became a subscriber for one hundred and fifty shares thereof; but as to the other parties mentioned in said bill as subscribers for said shares, and the amounts by them subscribed for, your respondent is entirely uninformed save by said complainant's said bill, but believes that the amount by the persons and firms respectively were subscribed for as in the said bill is alleged.

And the respondent further says that he has been informed, and believes it to be true, that immediately upon the execution of said building-contract said complainant entered upon the lands purchased by said company, and commenced the construction of the buildings described in said contract, and contracted for the machinery required in said mills; and that said Atlantic De Laine Company had charged to him, the said complainant, for drafts on himself, on account of stock, the sum of one hundred and thirteen thousand dollars previous to the date of his said assignment; but that he had actually paid in the same the respondent saith he knows not, and has not been informed, save by said complainant's said bill, and cannot state, as to his belief or otherwise; and, further answering, states that the amount expended by him as assignee in the completion of said contract was about the sum of one hundred and twenty-four thousand seven hundred and thirty-seven dollars and sixty-one cents; and that as to all additional liabilities to said company and its members in the execution of said contract, incurred by said complainant previous to the date of said assignment, as in his said bill is alleged, over and above the said sum by this respondent expended, this respondent saith may be true for anything the respondent knows to the contrary, but that he has no knowledge of and is unable to form any belief concerning the same.

And this respondent, further answering, says that he admits that application to the general assembly of Rhode Island for a charter as a manufacturing corporation was made and granted, and that the
177 persons named by complainant organized themselves according to the provisions thereof, as in complainant's bill is stated; and saith that he hath been informed, and believes it to be true, that the remainder of said subscribers to the capital stock of said company had paid in, in money and by individual liabilities, large amounts towards their subscriptions previous to the date of said assignment, and had paid said complainant, on account of his contract, by drafts of the attorney for the stockholders before their incorporation, and after by drafts of the treasurer of said corporation drawn on said respective subscribers, for the capital stock of said corporation, and payable to

the order of said complainant, at least one hundred and three thousand dollars, in settlement of assessments made on their shares of stock in said company, by them subscribed for previous to the date of said assignment.

And this respondent further admits that said assignment provided that this respondent as assignee should proceed and complete the contract which said complainant had entered into with the said Atlantic De Laine Company, in accordance with the terms thereof, and appropriate therefor, out of the assigned property, so much only as should be necessary to complete what then remained to be done or completed of said contract; and that in the execution of said trusts this respondent, as assignee, proceeded to complete said contract, and that he appropriated the greater portion of the proceeds of said assigned estate which came into his possession and control for that purpose; and further says that he cannot state of his own knowledge, and has not been informed save by complainant's said bill, and cannot set forth, as to his belief or otherwise, whether or not the actual amount expended by the complainant and this respondent, in the performance of the contract for the erection and completion of said mills and machinery, was about the sum of three hundred and forty thousand dollars, as complainant in his said bill has alleged, but admits that there has been expended by him as assignee, since said assignment, therefor about one hundred and twenty-four thousand seven hundred and thirty-seven dollars and sixty-one cents, and further admits that said mill was partially completed and put in operation in the latter part of the year 1851, and the whole of the same completed before the month of ; but in what manner completed, and how fully and successfully operated thereafter, this respondent is unable to state, either from his knowledge, information, or belief.

178 And this respondent, further answering, says that he has been informed, and believes it to be true, that previous to said assignment said complainant procured, by way of loan, seventy-five thousand dollars from the parties interested with him in said company, and that the complainant executed a mortgage or mortgages upon his interest in the property of said company, and upon other property belonging to him, to secure the payment of the same, which was delivered to said Chapin as trustee for the parties advancing the same; but what understanding was had as to foreclosing said mortgage or mortgages against the property of the complainant in said company, or what assurances were made by said Chapin as trustee for the parties who advanced the said money, about the stock being held by the complainant and his assignee *this respondent*, until the same could be disposed of to its full value, this respondent has not been informed save by complainant's said bill, and is unable to state either from knowledge, information, or belief.

And this respondent, further answering, admits that claims were made by said corporation, through their treasurer, after said mills were completed and said machinery furnished, both for damages for non-performance of said contract and for certain sums of money claimed to have been expended by them for labor, materials, and machinery, which they alleged to be within the contract with the complainant; but that all said claims were unjust and unwarranted, and that neither the complainant nor his estate were liable for the same, this respondent does not know and has not been informed, save by the said complainant's said bill, and cannot state, as to his belief or otherwise; but does admit

that said corporation, for a long time, did not come to any settlement with said complainant and this respondent, and persisted in said claims.

And this respondent, further answering, admits that a demand for certificates of stock was made on said corporation, which was not complied with, and the reasons given, as near as he can recollect, were that the corporation were not in a condition to issue them, as the capital stock was not all subscribed for, and no certificates had been issued to any of the stockholders; and also, that several attempts were made by said complainant to obtain a settlement with said corporation, but that said attempts were made by this respondent, or were frustrated
179 by the neglect and refusal to render any statement of their accounts with said complainant and his said assignee, *this respondent*, as in said complainant's bill is alleged, this respondent has no knowledge or remembrance of, has not been informed concerning, save by complainant's said bill, and cannot set forth as to his belief or otherwise. Neither does he know, nor has he been informed save by complainant's said bill and by said complainant himself, of the said complainant's having procured certain friends of his to offer to advance a sufficient sum for the payment of his said debts, with the view alleged under and with the proviso by them made, nor as to complainant's calling, in company with said persons, upon the treasurer of said corporation for statements, which were refused by said treasurer, whereby said complainant was prevented from obtaining the advance and making the settlement by him contemplated as in his said bill is alleged, and cannot set forth as to his belief or otherwise.

And this respondent, further answering, admits that on the 5th day of February, 1853, said George W. Chapin as trustee advertised the estate of said complainant, situate in the town of Scituate, which had been mortgaged on the first day of August, 1851, to be sold on the 25th of February, A. D. 1853, and the right, title, and interest of said complainant in and to the capital stock of said Atlantic De Laine Co., and in and to the real and personal estate of said company, and in and to the estate, other than the Scituate estate, mortgaged as aforesaid, on the first day of August, 1851, to be sold on the 26th day of February, 1853, under the power contained in said mortgages, but whether in violation of any such understanding or assurances, as in said bill of complaint is alleged, this respondent is unable to state, or upon information and belief to admit.

And further answering, this respondent admits that thereupon he filed his bill in equity, in the supreme court of Rhode Island, within and for the county of Providence, on the 22d day of February, 1853, against George W. Chapin, trustee, and the Atlantic De Laine Co., wherein, after setting forth the contract between said complainant and said company, to build and finish the mills of said company, he claimed that there was due to said complainant, his assignor, from said company, as his said assignor claimed, outside of said contract, the sum of fifty-five thousand dollars; and further setting forth certain
180 mortgages to said George W. Chapin as trustee, from said complainant, dated August first, 1851, given to secure the payment of the sum of seventy-five thousand dollars, this respondent averred that certain bonds of the Cannelton Manufacturing Co., of the value of fifty thousand dollars which had been placed in the hands of said George W. Chapin, trustee, had been sold by him, and that he had received therefor the sum of twenty-five thousand dollars, which had been applied to the payment of the said sum of seventy-five thousand dollars, which said mortgages had been given to secure; and further,

that the proceeds of the sale of a certain farm in Warwick, included in one of said mortgages, had been, after the payment of a prior mortgage, applied to the payment of said sum of seventy-five thousand dollars, to wit, the sum of about fifty-six hundred dollars, and that the proceeds of the sale of stock on said farm had also been applied to the payment of said sum, making in all payments thereon to about the sum of thrity-two thousand dollars: that the property held under said mortgage was greatly more than sufficient to pay the residue of said debt; that all efforts on his part to obtain an account of the condition of the affairs of said company, in order that he might ascertain the value of the stock held by him as assignee, so that it might be disposed of to the greatest advantage for the benefit of the creditors of his assignor, had been in vain—said Chapin having repeatedly refused to render the same; that said property described in said mortgages had been advertised for sale on the 25th and 26th days of February; and he prayed that inasmuch as an account of the affairs of said company had been refused him, as the security for said debt was ample, as the parties defendant were largely indebted to his assignor and himself, as assignee, and their account by agreement referred to arbitrators, and as the said parties had agreed to transfer the said mortgage to any person who would pay the amount due thereon, and had shortly before the filing of his said bill, by said assignee, refused to transfer the same, although the amount due on said debt had been offered them, and as a sale at the time fixed in the advertisement would be an irreparable injury to him and the creditors of his assignor, that said George W. Chapin, as trustee, and as treasurer of said defendant company, might be decreed to render a statement and account of all the business and condition of said company and its property, of the true amount due on said mortgages, deducting the amount due from said company to the
181 said complainant or his assignee, and that the said George W. Chapin might be decreed to assign and transfer said mortgages to any person who would pay the amount due on the same, the respondent offering to redeem the same or to see that the amount due thereon was paid, and that said George W. Chapin and all persons acting for or with him might be enjoined from proceeding with said sales, or either of them.

And the respondent, further answering, admits that on the 22d day of February, 1853, he, as assignee of said complainant, filed his petition in the clerk's office of the supreme court of Rhode Island, within and for the county of Washington vs. Geo. W. Chapin, trustee, and the Atlantic De Laine Company, wherein, after averring that he had filed his bill of complaint vs. said parties defendant, and setting forth in part the substance thereof, as in said bill set forth, and by this respondent hereinbefore admitted to have been set forth, he averred that the persons and firms, for whom said Chapin acted as trustee, formed the Atlantic De Laine Co., with the addition only of this respondent, in right of the said complainant, and Day, Owen & Co., which last firm were interested only to the amount of about three thousand dollars, and that the refusal to furnish an account was believed to be, from design, to throw a cloud upon the value of the shares of stock of said complainant, and to prevent this respondent, as assignee, from selling them at a fair price, and to deter all but themselves and their confederates from purchasing; that if the property should be sold, without any account being rendered, this complainant and his creditors would suffer, and be defrauded, since they, the said defendants, only knew the real value of said stock; and that for the purpose of depreciating the value of said shares

of stock it had been represented that said Atlantic De Laine Co. had lost money by its operations, although the directors thereof had stated the contrary, and assured this respondent, the petitioner, that the stock would soon be a good dividend-paying one; that such a sale would be an unjust advantage, taken by said mortgagees, desiring not to obtain their just debts, amply secured, but, directly or indirectly, the property assigned, at much less than its fair value. And this respondent therefore prayed for an injunction, forbidding said Geo. W. Chapin, and all persons, from proceeding to sell all or any part of the property aforesaid, or any part thereof, under the powers in said mortgages contained.

182 And this respondent, further answering, admits that subsequently, before the time appointed for said sale, the said court granted so much of the prayer of said petition as to enjoin the sale of any of the capital stock of said corporation, in said petition mentioned, or any other of the estates or property, real or personal of said company, and said complainants, their right, title, and interest in the capital stock in said company, and in and to all the estate and property of said corporation in North Providence, under and by virtue of any power of sale contained in said mortgage before mentioned, and no more.

And this respondent, further answering, admits that subsequently said George W. Chapin, as treasurer, rendered this respondent a statement of the condition and affairs of said corporation; but whether the same was correct and true, or not, and whether or not this respondent was deceived thereby, he is unable to state or admit from knowledge, recollection, or information, but has no reason to believe it was incorrect or untrue, or made with any intent to deceive this respondent; and does admit that, subsequently, he did entertain a proposition from said corporation for the settlement of said suit, which resulted in the withdrawal of the same, and the execution of mutual releases between this respondent and said corporation, which releases are marked "C" and "B," and to complainant's said bill annexed; and that said corporation at the same time executed a release to said complainant; and further states that he has no knowledge or remembrance, information or belief, that said complainant expressed any dissent to the same, and therefore does not admit any express dissent, as in complainant's said bill is alleged.

And further answering, this respondent avers that he cannot state upon knowledge or information whether or not said settlement, conveyance, and acceptance of said releases were procured to be executed and accepted by incorrect statements of the accounts between said complainant and his estate and said company, and the affairs of said corporation, nor whether the same were made with intent to deceive and defraud this respondent and said complainant, and to obtain the shares in the capital stock of said corporation without paying a just value therefor; but he has no reason to believe said statements were incorrect, or made with any intent to deceive and defraud this respondent and said complainant, and to obtain the shares of stock without paying a just

183 value therefor; nor can he state, upon knowledge or information, whether or not the attempt to foreclose the mortgage, without rendering a proper statement of the affairs and condition of said corporation, as in said complainant's bill is alleged, and as this respondent has hereinbefore admitted, he, in his said bill and petition herein referred to alleged, was with the intent to obtain the stock at less than its fair value, and that the acts of said corporation, and its treasurer and officers, with regard to said stock and sale, were done for the purpose of deterring purchasers from bidding at said sale, and to obtain said stock

for less than its fair value, to the injury of the said complainant and his estate, in the hands of his said assignee; but has now no reason to believe that said acts were done for the purpose of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value.

And this respondent, further answering, says that he is unable to state, upon knowledge or information, whether or no the conveyance by him of said stock was and is utterly void, by reason of the fraud and deceit alleged in said bill of complaint to have been practiced upon this respondent, but has no reason to believe that any fraud and deceit was practiced upon this respondent by said corporation or any of its officers.

And this respondent, further answering, says that he does not know and has not been informed, save by complainant's said bill, of the fact of complainant's discharge from all debts, obligations, and liabilities then outstanding, with the exception therein in said bill named; or that all the expenses of said assignment have been paid; or that all the claims directed to be paid and discharged by said assignment, with the exception named in said bill, have been paid and discharged; or that said complainant is entitled to a reconveyance from his said assignee, this respondent, of the property remaining in his hands; but says that after applying so much of the assigned property as came into his hands to the completion of the contracts named in the first clause of said assignment, there remained nothing in his hands to pay the remaining expenses of executing said assignment, or any of the other creditors, and that he has no property of any value, belonging to said estate, now in his possession. Neither does he know, nor has he been informed, save by complainant's said bill, and by said complainant himself, that there
184 was due to said complainant and his estate, from said defendant corporation, for work, labor, and materials furnished and expended in and upon the property of said defendant corporation, and with their consent and authority, which were not called for by, nor included in, the contract between said corporation and said complainant, a large sum of money, to wit, fifty-five thousand dollars and upwards; and cannot state his belief or otherwise; and as to the allegation in complainant's said bill that the said defendant corporation had no just and legal claim against said complainant or his said assignee, the respondent, equal to the amount of said charges and the value of said stock, and that the transfer of said stock and the release of said extra charges could not have been procured from said assignee except upon the false and fraudulent statement of accounts and the concealment of the true condition of the affairs of the said defendant corporation, this respondent states that he has no knowledge or information, save that derived from complainant's said bill, but has no reason to believe that the statement of accounts were false and fraudulent, or that there was any concealment of the true condition of said corporation.

All which matters and things this respondent is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and he humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf wrongfully sustained.

LYMAN B. FRIEZE.

JOHN A. GARDNER,
Solicitor for L. B. Frieze.

RHODE ISLAND DISTRICT,
City of Providence, sc:

In the city of Providence, on this eighteenth day of April, A. D. 1861, hen personally came Lyman B. Frieze, and made oath that the matters

in the foregoing answers by him subscribed, stated of his own knowledge, are true; and that the matters therein stated upon information, remembrance, and belief are true, according to the best of his knowledge, information, remembrance, and belief.

Before me,

JAMES H. PARSONS,
U. S. Commissioner.

185 RHODE ISLAND DISTRICT, *sc.:*

Circuit court of the United States.

CHARLES T. JAMES
vs.
THE ATLANTIC DE LAINE COMPANY ET AL.

The replication of Charles T. James, complainant, to the answer of Lyman B. Frieze, one of the defendants.

This repliant, saving and reserving unto himself all and all manner of advantage and exception to the manifold insufficiencies of the said answer, for replication thereunto saith: That he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain and untrue, and insufficient to be replied unto by this repliant. Without this, that any other matter or thing whatsoever, in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove, as this honorable court shall direct; and humbly prays as in and by his said bill he hath already prayed.

T. A. JENCKES,
Solicitor for Complainant.

186 *Interrogatories to Lyman B. Frieze.*

Interrogatories to be proposed to Lyman B. Frieze, a party defendant in said suit, whose testimony is taken by order of the court, in behalf of the Atlantic De Laine Co. and George W. Chapin, co-defendant.

1. What is your age, residence, and occupation?
2. State whether or not you were assignee of Charles T. James.
3. What amount of property came into your hands, under said assignment, and what was realized from the same?
4. What was the amount of the debts of said James, and what proportion, if any, of the same have been paid by you, as assignee, out of the assigned estate—what have you done with the proceeds of the property assigned to you?
5. State whether your charges and expenses, as assignee, have been paid.
6. State whether or not you ever called, as assignee of said James, upon George W. Chapin, treasurer of the Atlantic De Laine Co., for a statement of the condition of said company. If you say that you did, state when, for what purpose, in what manner—whether verbally or in writing. State fully all that was said and done by said Chapin and yourself in relation to the same.

7. State what was your purpose in filing the bill of complaint, and for an injunction, mentioned in this bill. State whether or not you were desirous of effecting a settlement with said Atlantic De Laine Co., and with said George W. Chapin. And if you state that you were, state why; give the facts and circumstances which made such a settlement desirable fully and particularly.

8. After said bill was filed, state whether or not a written statement of the condition of said company was furnished to you; and if so, by whom.

9. State whether or not you had any difficulty in understanding said statement—whether you have ever discovered any error in it, and whether you were deceived or misled by it.

10. State whether the said George W. Chapin ever withheld, or showed any disposition to withhold, from you, as assignee of said James, any statement of the condition of the Atlantic De Laine Company, or of their accounts, or his own account, as trustee with said James, or yourself, as assignee.

187 11. State whether or not any information which you desired about your own accounts or those of Charles T. James was furnished you by said Chapin when called for.

12. State whether or not you proposed through any person to negotiate for a settlement between yourself, as assignee, and the said Atlantic De Laine Co. and said Chapin. If so, through whom was said proposition made?

13. State whether such negotiations were had, how long they continued, with what friends of General James, if any, you consulted about the same; whether, while such negotiations were pending, you knew the condition of the Atlantic De Laine Company, of the assigned estate in your hands, and the state of the accounts between yourself and the said Atlantic De Laine Company and said Chapin. Did such negotiations result in a settlement? And if you say that they did, state the fact which induced you to make said settlement.

14. State whether or not you communicated to said James the fact that such negotiations were pending; if so, whether by despatch or letter; whether any reply was received by you; and, if so, what. State whether you communicated to him the terms of the proposed settlement, as finally agreed upon, and whether you received any answer to the same; and, if so, what. And state particular whether you received a despatch from him. If so, produce the same, and if you say you cannot, state why not. State the contents of the same, or the substance thereof. Give the date when you received the same, and if you say that you cannot, state whether it was before or after the date of the releases between you, as assignee, and the Atlantic De Laine Company.

15. State how soon after such settlement you saw the said Charles T. James, and whether he then knew that the same had been made, and what, if anything, he then said in relation to the same, and whether, at that time, he found any fault with or objection to the same.

16. State whether, before the time of said settlement, you knew that the Atlantic De Laine Company made a claim upon said Charles T. James and his estate for damages for the non-fulfillment of his contract with them. If so, about how long before?

17. State whether, to your knowledge, repeated attempts, or any attempts, were made by yourself or said James to obtain a settle-

188 ment with the Atlantic De Laine Company, previous to the time when said settlement was made. State all that you know about any such attempt or attempts.

18. State what you know, if anything, about offers by friends of said James to advance money for him in case he could make such settlement. State from whom you heard of such offers, if any. State whether you ever heard from said Charles T. James that such offers were withdrawn on account of his inability to obtain accounts or statements of its condition from said company, or anything to that effect. State whether said James ever complained to you that he could not get the accounts or statements of the company, and whether he ever requested you to get such accounts or statements.

19. State whether you ever knew or heard of any agreement that said Charles T. James's interest in the Atlantic De Laine Co. should not be foreclosed, or disposed of under the mortgage mentioned in this bill to the prejudice of said James, or any agreement to that effect upon that subject, or whether said James ever stated to you that there was any such agreement, or any agreement upon that subject. If so, state when and what he said.

20. State whether or not all the charges made to you by the Atlantic De Laine Co. in their account with you were allowed by you, and whether they were correct and embraced within said James's contract within your personal knowledge; and if you say that some of them you had no knowledge of, state upon whose authority you approved the same; and if you say A. R. Fiske—if so, state the relation of said Fiske to you, in your capacity as assignee, and to said James. And state whether or not there was, to your recollection, any disagreement between you and said Chapin as to what should be charged to your account.

21. At the time of said settlement had you in your possession any accounts of the said Atlantic De Laine Co. and of George W. Chapin, trustee, against the said Charles T. James and yourself, as assignee? If so, and they are now in your possession, produce them; and, if not, state in whose possession they are. When were they presented to you, by whom, and at whose request? State, as nearly as you can, the substance of such accounts. State whether at that time, or at any time, you have discovered any error in said accounts, and particularly state whether, to your knowledge, said settlement was in any manner influenced by any error in said accounts. Was there any error in said accounts? If so, what was it?

189 22. State whether a statement of the affairs of the Atlantic De Laine Co. was demanded by you in the early part of the summer A. D. 1852. If so, state the circumstances and what was done about it; state whether you ever told William H. Parkhurst that such a demand had been made.

23. State whether or not before or after you made a formal demand in writing to George W. Chapin for a statement of the affairs of the Atlantic De Laine Co. you had, to your recollection, any personal interview and conversation with said Chapin upon the subject. If so, state when, where, and what was said; state whether, to your recollection, you had any such conversation in the presence of William H. Parkhurst, and whether said Chapin, to your recollection, declined to furnish such statements. State fully, to your recollection, all that took place between you and said Chapin upon the subject of said statement.

24. State whether, after said statement was furnished to you, the same was ever sent for by said Chapin to your knowledge; whether to your knowledge he, Chapin, ever stated or sent word that he desired to correct any errors in said statement; state when and for what reason the said statement was delivered to said Chapin, if at all, and particularly state whether it was before or after the settlement with you.

25. Please read the statement hereto annexed marked "A," and state whether you ever had such conversations with William H. Parkhurst as are therein narrated; if the statements therein alleged to have been made by you are incorrect in any particulars, state fully in what particulars.

26. State any other matter or thing within your knowledge material to the defendants in this case.

A. PAYNE, *Solicitor.*

"A."

In answer to the twenty-fifth interrogatory, he saith: The circumstances were as follows: The De Laine Company had an account against the assignee of some seventy thousand dollars or more, which they were very anxious to have adjusted. They were clamoring for their pay. The assignee was so situated that money to meet his claim and release the stock could not be procured, neither was he able to meet other demands that were due and becoming due. The assigned estate all or nearly all exhausted except the property held under the mort-
190 gage, and that held by the De Laine Company as security for the claim and for which they had refused to issue the certificate of stock. After a careful survey of the case in all its bearings, Mr. Frieze said to me he had about decided to accept the proposition made him by the De Laine Company. I said I would not do it, but I would fight it out. Mr. Frieze replied in substance: The De Laine Company have an account as rendered, which they will settle as they propose, but to force, show any disposition to kick at it. Chapin says they will try in a claim for damages for non-fulfillment of contract, for defect in the motive-power, machinery, &c., and they will make a claim which will eat up all the balance which there may be, or that we claim is due us. We can't get anything from them, neither stock or anything else, and by settling this way I shall get rid of the greatest trouble I have had during this whole business; besides, if we take their statement, the stock is worth no more, if as much, as the debt, and I think that I shall make a good trade if I settle in this way. Mr. Holmes made the same statement, in effect, as Mr. Frieze, stating that no satisfaction would be made by standing out, as they had all the advantage, and they were bound to keep it; that the best thing that could be done was to close it up, and under these views and with these feelings the account was finally settled, according to the proposition made by the De Laine Co.

In answer to the twenty-eighth interrogatory, he saith: Mr. James was absent from Providence during the time these matters were pending, though we heard from him frequently. He was not here at the time the settlement was made, nor did he give his consent to it. I think the statement was made before he was notified that it was contemplated. I know that he telegraphed requesting that the matter might be delayed until he could return. He returned a few days after the settlement was made, and I had a conversation with him about it. He said that "if I had been here, that settlement would not have taken place with my consent;" that he did not consider himself bound by it, and that if he lived he would rip it up at some future time. He entirely repudiated it, and appeared very decided in his expressions in regard to it.

In answer to the twenty-seventh interrogatory, he saith: I did have a conversation with said assignee, or rather, I had several conver-
191 sations with him during the time that was pending. I was informed by him, finally, that he had agreed upon a settlement

with the De Laine Co. I made the inquiry, "Have you heard from the general yet?" He said, "I have not; I expected to hear, but I have not heard. Chapin is in a hurry to have it closed up, and I have agreed to make the settlement this morning." I made the remark, "The general will not agree to it." He replied, "I can't help that; the thing is done now; and if he don't like it, or don't agree to it, he will have a chance to pitch into them by and by, if he wants to." I think these were his precise words; if not, they were to that effect.

Cross-interrogatories.

Cross-interrogatories to Lyman B. Frieze on the part of complainant.

1. Did you consider that the statement of the affairs of the Atlantic De Laine Company, exhibited to you by George W. Chapin in February, 1853, showed the company to be in an embarrassed condition?
2. Did you undertake to verify said statement by a reference to the books of the company, either by yourself or any person employed by you?
3. Have you at any time since the releases between yourself and the De Laine Company were executed ever attempted to verify the truth of said statement?
4. Was said statement ever shown to Gen. James by you?
5. Look at the letters hereto annexed, marked "A, B, C, and D," the originals of which are in the hands of the commissioner, to be marked by him, and state whether they are true copies of the original letters written by you to Charles T. James, on the days when they purport to be dated, and whether they were forwarded to him by regular course of mail.
6. Is not letter A the first in which you informed him of the intention of the De Laine Company to sell out his interest in that company, and does not letter D contain the first notice to him of your settlement with De Laine Company?

192 LETTER A.

PROVIDENCE, *Feb. 4th*, 1853.

DEAR SIR: Chapin this morning received a letter from Hacker, Lea & Co., ordering him to advertise the property at once; and he has therefore backed out of his agreement of yesterday, and says he must advertise to-morrow. I have tried every way to get him to postpone it till I could hear from you, but he will not take the responsibility of so doing. Carpenter has gone to Cuba, and everything therefore goes just as says Josiah Chapin and the New York and Philadelphia houses. I told Chapin the property should not be sold if there was any law to prevent it, till they had made a statement of their standing, to show what the mill was doing and the stock was worth. He replied that he could not make a statement till our account was settled. I told that had so much charged to us on their books, and their statement must, of course, come from those and not our own. At any rate, we must know just how their matter stood, and what they were doing, in order that I might represent the value of the stock correctly and obtain its true value. He tried very hard to frighten me off by a call for a statement of the assignee matters, &c., but I told him he would find me perfectly ready and willing to meet him at the proper time in any shape he might choose to come, and I should expect the same thing of him in relation to the De Laine Mill. If we wish to put them entirely through, now is the time, for the provocation has

come. They have refused to postpone one day. I have been able to manage them up to this time by apparently coinciding with them in their views, and making it appear that I was much more for their interest than yours. They say they should have advertised six months ago, as they think they had a right to do, had they not supposed I positively knew about all the arrangements, and assured them from week to week that the negotiations would be closed. You can see how the matter now stands, and say whether you expect to close the negotiations, or whether I shall go ahead and fight the matter out the best way I can. I think they intend to sell the Scituate farm first, and will probably then take the city estate, and follow with the De Laine Mill stock, if not stopped. The Blackstone Bank have been talking of sueing their claims, but whether they will do so or not, I cannot say. I have just
193 learned before closing this that you were to be in New York to-morrow.

I wrote you yesterday at Washington about the matter, and that Chapin had agreed to wait till Tuesday next; but his letter this morning made him withdraw from that.

In haste, yours, truly,

L. B. FRIEZE.

LETTER B.

DEAR SIR: It is necessary that W. H. Potter and myself should remain here to try to work out the injunction, to use in case everything else should fail. Did the De Laine Co. give you any receipt for the Cannellton notes; and if so, where is it? Where did you put the De Laine Co.'s accounts? I have wanted them very much indeed. N. F. Potter will tell you the whole story, and show you that nothing can be expected of the Chapins & Co. They are determined to push everything through, if the thing can be done. It is not safe for Potter and myself to leave, under the present state of things. Telegraph me to-morrow whether you are coming on. If anything transpires, you will hear from me.

Very truly, yours,

L. B. FRIEZE.

PROV., *Feb.*, 1853.

LETTER C.

PROVIDENCE, *February* 23*d*, 1853.

DEAR SIR: I have time to say but a few words. The money was tendered to Chapin this day and refused. He is cited to appear before the Supreme Court to-morrow on the injunction. Potter (N. F.) has also filed a bill to compel them to transfer to him, and we think it can be done to-morrow. I will telegraph you result as soon as we get decision. Fisk shew me your letter, and what you said in relation to Lea, of Phil. I don't think it will do to trust him too far. It was H. L. & Co. letter (I saw it) that induced Chapin to advertise when he did. Palmer,
194 from Hartford, will be here to-night. I wrote the N. Yk. parties yesterday, and sent an assignee obligation for $15,000; but can't say whether it was what they wanted.

Very truly, yours,

L. B. FRIEZE.

LETTER D.

PROVIDENCE, *March* 3*d*, 1853.

DEAR SIR: We have partially arranged with the De Laine Co., by which they agree to release you from all obligation and give a full dis-

charge of all claims. They release the Scituate farm to Potter, which makes it right for you. The estate was sold and the amount of purchase-money obtained of Gen. Carpenter on Mr. Holmes's note, endorsed by myself, payable on demand. The Blackstone folks are making arrangements to sue their mortgage. I enclose a slip from Holmes. I will write you in full to-morrow.

Yours, truly,

L. B. FRIEZE.

Deposition of Lyman B. Frieze.

Deposition of Lyman B. Frieze, of Providence, who, being duly sworn, doth depose and say, as follows:

1. In answer to the first direct interrogatory, he saith: I am thirty-six years old, and reside in Providence, and carry on the bleaching business.

2. In answer to the second direct interrogatory, he saith: I was.

3. In answer to the third direct interrogatory, he saith: I shall annex a schedule of the property that came into my hands, marked "A." I cannot tell its value, as nearly all of it was mortgaged or pledged as collateral, or under attachment. The real estate in Providence, the Warwick and Scituate farms, were sold under mortgage, and the proceeds retained by the mortgagees. The stock in the Atlantic De Laine Co. was surrendered on the settlement made with them in March,
195 1853. The stocks of the Saunders Cotton Mills, of the Rockport Steam Mill, the Bank of America, and the National Bank were pledged as collateral by James, and surrendered to the parties holding them having claims upon them. James' interest in the stocks of the Conestoga, Harrisburg, and Reading Mills had been attached by William Mason & Co., of Taunton, previous to the assignment, and these stocks, with the addition of those of the Montauk Manufacturing Co. and the Cannelton Mill, set down in the schedule, were surrendered to said Mason & Co. by an agreement made with them October 10th, 1851. The terms of the agreement were, that on the receipt of the certificates of said stock Mason & Co. would waive their attachment and all demands for the amount of their claims thereon, being the sum of $133,406.54, and they further agree to send forward immediately the machinery then in their shop, which has been contracted for by James for the Atlantic De Laine Mill and was ready for delivery. This machinery was valued at $69,887, and was not included in their account of $133,406.54. All the machinery was delivered, enabling me in part to complete the contract with the Atlantic Co. as I was directed to do in the first clause of the assignment. The market value at that time of all the stocks thus surrendered was about $65,000. The amount realized by me from the property that came into my hands by the assignment was about $28,049.32, and there is no property of any particular value now remaining in my hands.

4. In answer to the fourth direct interrogatory, he saith: I am unable to state the exact amount of the debts of said James. They were, however, between $650,000 and $700,000. No creditors of the estate, excepting for debts incurred since the assignment and a small amount for labor done previous to the assignment, have been paid by me. I have assented to compromises with some parties holding collaterals to save the same from compromise and loss. The proceeds of the property received by me have been expended for labor done previous to the assignment, in completing, as far as my resources allowed, some of the con-

tracts mentioned in the first part of the assignment and paying in part the expenses of said assignment.

5. In answer to the fifth direct interrogatory, he saith: All charges made by me for expenses of the assignment are settled.

196 6. In answer to the sixth direct interrogatory, he saith: I did call on Mr. Chapin for a statement, but cannot say when. I think it was before I filed a bill for an injunction. I called for the purpose of learning the condition of the company. I cannot say definitely what was said; I merely recollect the fact of calling.

7. In answer to the seventh direct interrogatory, he saith: My purposes were for the object stated in the bill which I filed. I did wish for an adjustment of the business between the Atlantic De Laine Co., the trustee, and myself, as assignee. I wished a settlement for the purpose of closing up the business.

8. In answer to the eighth direct interrogatory, he saith: After said bill was filed a written statement of the standing of the company was furnished by Mr. Chapin and handed me. I think by his clerk, Mr. Munro.

9. In answer to the ninth direct interrogatory, he saith: My impression is that I understood the statement, but objected to it as not giving the condition of the company at the time by taking a regular account of stock at the mill. I have no recollection of finding any errors in it, and do not think I was deceived by the statement.

10. In answer to the tenth direct interrogatory, he saith: I have called on Mr. Chapin for a statement when it was not furnished, and he stated that he was not prepared to do so. I do not know that he ever manifested any disposition to withhold such statement from me after he was prepared to furnish it.

11. In answer to the eleventh direct interrogatory, he saith: Sometimes I called for information about said accounts, and he was unable to give it at the time, but furnished it subsequently.

12. In answer to the twelfth direct interrogatory, he saith: I think there were no propositions made either by the De Laine Co. or myself in the commencement of our negotiations for a settlement. Mr. Geo. B. Holmes acted for me in the final adjustment.

13. In answer to the thirteenth direct interrogatory, he saith:

197 Negotiations were had which continued for several days, and resulted in a settlement on the 5th of March, 1853, when the mutual releases were executed and placed in the hands of Mr. Holmes until the individual releases of each member of the company could be obtained. I think Mr. Holmes, Nathaniel F. Potter, Henry W. Gardner, were all friends of Mr. Holmes, and consulted about the matter. I did know of the condition of the company from their statements and from the general condition of business at the time. I knew what was the condition of the assigned estate and of the accounts between myself and said Chapin and the company from my own books and from their accounts. I made the settlement on the ground that we thought it was the best thing that could be done for the estate.

14. In answer to the fourteenth direct interrogatory, he saith: I did communicate to General James the fact of the negotiations and the terms proposed by letter, while the matter was pending, and I think I received a dispatch from him in reply, but it is not now in my possession, and neither do I know where it is. I cannot give its date, but think I received it before the execution of the mutual releases.

15. In answer to the fifteenth direct interrogatory, he saith: I cannot say how soon after the settlement I saw General James, but he was

aware of it before he returned to Providence from Washington. I do not recollect of his finding any fault with the settlement on his return.

16. In answer to the sixteenth direct interrogatory, he saith: Before the settlement Geo. W. Chapin did notify me, either by letter or verbally, that the De Laine Co. had a claim on Charles T. James for damages for non-fulfillment of contract. I cannot say how long before.

17. In answer to the seventeenth direct interrogatory, he saith: James made several negotiations to pay off the mortgages held by Mr. Chapin as trustee, providing those persons that he represented would transfer them to other parties. I have no recollection of making any attempt to settle with the De Laine Co. other than that which resulted in a settlement.

18. In answer to the eighteenth direct interrogatory, he saith:
198 I think James has told me that he had had such offers, but have no recollection of his saying that they were withdrawn because he could not obtain the accounts of the company. I think he has requested me to get a statement of the condition of their affairs and his own accounts.

19. In answer to the nineteenth direct interrogatory, he saith: I may have heard James say that the De Laine Co. had agreed not to foreclose the mortgage on his stock, but cannot now recollect about it.

20. In answer to the twentieth direct interrogatory, he saith: All the items charged to my account, as assignee by the De Laine Co., were allowed by me under agreement made with them for advancing monies to complete the mill. All said charges were believed to be correct by me and embraced within James' contract. Any bills I did not know were embraced within the contract were by me referred to Mr. A. R. Fiske; on his approving them they were certified by me, and then paid by the company and charged to account. Mr. Fiske was acting for me at the mill, superintending the completion of the contract, and also for himself, he being a party to the contract with Genl. James in building the mill. He was Mr. James's son-in-law. Mr. Chapin and myself did have some discussion as to bills that were presented for payment, but they were always arranged.

21. In answer to the twenty-first direct interrogatory, he saith: I had said accounts in my possession at the time of settlement, but have not now. I think they are now in possession of Genl. James. I cannot say when they were presented to me. I presume they were sent at my own request. I cannot now state the substance. I have never discovered any errors in them.

22. In answer to the twenty-second direct interrogatory, he saith: I have no recollection of having demanded a statement at that time, though I may have done so. I have no recollection of telling Mr. Parkhurst that I had made such a demand.

23. In answer to the twenty-third direct interrogatory, he saith:
199 I did have several personal interviews with Mr. Chapin, both before and after making the demand in writing, but cannot give the details of our conversation. I cannot say where I had conversations with him, but suppose sometimes at his office and sometimes at my own. I do not recollect any conversation in the presence of Parkhurst. I do not recollect of Mr. Chapin's declining to furnish me such statements, but think that he stated that he was not prepared to do so until the accounts were settled.

24. In answer to the twenty-fourth direct interrogatory, he saith: I do not recollect that Mr. Chapin sent any one to me for said statement, or that he sent word that he desired to correct any error therein. After

the settlement was made, the statement was given to Mr. Chapin by me, voluntarily. I did not consider that it was right for me to hold the statement and expose the standing of the company, which I considered in an embarrassed condition, after our matters had been adjusted.

25. In answer to the twenty-fifth direct interrogatory, he saith: I have no recollection of ever having had any such conversation with William H. Parkhurst.

26. In answer to the twenty-sixth direct interrogatory, he saith: I know of nothing which has not been stated.

Cross-examination.

1. In answer to the first cross-interrogatory, he saith: I did.
2. In answer to the second cross-interrogatory, he saith: I did not.
3. In answer to the third cross-interrogatory, he saith: I have not.
4. In answer to the fourth cross-interrogatory, he saith: I do not recollect.

5th. In answer to the fifth cross-interrogatory, he saith: The letters were written by me. Whether they were all forwarded by mail, I cannot now say. I presume they were written on the days when they purport to be dated.

6. In answer to the sixth cross-interrogatory, he saith: It
200 appears from the letter itself, marked "A," that I had previously written to Genl. James on the subject. He knew of their intention to sell before I wrote this letter, and the negotiations alluded to in the letter were with a view to prevent the sale. I cannot say whether the letter marked "D" was the first notice of the proposed settlement which I gave General James or not, as I very seldom copied letters sent to him.

L. B. FRIEZE.

Sworn to before me this fourth day of June, A. D. 1861.
JAMES H. PARSONS,
U. S. Commissioner.

A.

Annexed to deposition of L. B. Frieze, by me,
J. H. PARSON',
U. S. Commissioner.

Real estate, in Providence	sold under mortgage.
Warwick farm and stock	do do
Atlantic De Laine Co. stock	do do
Saunders Mill, cotton stock	comprised as collateral.
Rockport Steam-Mill stock	
Montauk Manfg. Co. stock	paid to Wm. Mason & Co.
Connestoga Steam-Mill stock	do do
Harrisburg Steam-Mill stock,	5,000 do. do. / 20,000 to R. I. Ross, cash.
Reading Steam-Mill stock	paid to Wm. Mason & Co.
Cannelton Steam-Mill stock	do do
American Cannell Co. stock	not received.
East Tennessee Mining Co. disposed of by mortgage to A. De Laine Co.	
Charleston Steam-Mill stock, on hand, no fixed value.	
Personal property in Mansion House, sold	$8,571
Three shares James's Steam-Mill stock, on hand, no fixed value.	
100 shares Hill Mining Co. (copper)	do do
100 shares Blackstone Coal Co. stock	do do
Allen Brown's note, on hand, no value	$3,600

John Holden's note,	do. do.	300
A lot of notes and due-bills considered worthless, on hand		1,700
Charleston Steam-Mill Co.'s account, worthless		1,762
American Cannell Co., settled		15,000
	T. Whitford, paid	200
201	Simeon Babcock, $250, failed, paid	125
	Sisson & Jencks paid F. Greene & Co., on account De Laine machinery, paid	800
Hamilton Smith, considered worthless, disputed acc't.		
Bank of America stock, sold to pay stock-note, same amount		4,000
National Bank stock, sold to pay stock-note, (bal. 800, cr. in cash account)		8,400

Interrogatories to Edwin Hoyt.

Interrogatories to be propounded on the part of the respondents to Edwin Hoyt.

1. State your age, residence, and occupation.

2. Are you a member of, and do you hold any office in, the Atlantic De Laine Co.; if so, what, and how long have you held the same?

3. State with whom the negotiations which resulted in the loan of seventy-five thousand dollars, and the mortgage to secure the payment of the same, was conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

4. State whether or not, the said mortgage was made, and the provisions in said assignment requiring the assignee to complete the contract with the Atlantic De Laine Co., were insisted upon, upon any understanding or assurance on your part; if so, upon what understanding and assurance, and in whose behalf. State fully and particularly your knowledge upon this subject, and give your means of knowledge.

5. State whether the said mill was completed and the said machinery furnished according to the contract with said James, mentioned in the bill of complaint. If you say they were not, give your knowledge and your means of knowledge upon that subject.

6. State whether or not the said Atlantic De Laine Co. made any claim upon the said James, and upon the said Freize, his assignee, for anything connected with, or on account of, said contract. If you answer that they did, state fully and particularly the note and extent of such claims. State how, and to whom the same were made, and what was said and done in relation to the same.

202 7. State whether the claims aforesaid, at the time when so made, were by you believed to be just and legal claims against said James and his estate; and state whether the same were made within your knowledge, with any design to hinder or prevent a settlement between the said company and the said James.

8. State whether the said claims did, to your knowledge, in fact, hinder or prevent any settlement between the said company and the said James.

9. State all the facts in your knowledge and recollection relating to any attempted settlement or reference between said company and said James, prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James or his assignee, and by yourself as treasurer of company, in relation to such attempted settlement, if any.

10. State whether or not, to your knowledge, the said Atlantic De Laine Co. ever neglected and refused to render any settlement of their accounts with the said James or with his assignee, the said Frieze.

11. State whether or not the said James, or his assignee, ever requested to be furnished with such accounts to your knowledge and recollection.

12. State whether, or not, the said James and his said assignee had at all times full means of knowing the state of such accounts.

13. State whether or not the said James or his said assignee ever, to your knowledge, complained that they had or could not obtain a knowledge of the state of such accounts.

14. State if you know anything in relation to an offer by friends of the said James's to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James's, interest in the property of the said Atlantic De Laine Co. State all that you know in relation to that subject, if anything.

15. State all the circumstances under which the mutual release between the said Atlantic De Laine Co. and the said Frieze, mentioned in said bill, were made; state who first suggested the same, and when and where; state what was done in pursuance of such suggestion, and state fully and particularly all that was done in relation to the same, by yourself, or the said Frieze.

16. State whether, or not, to your knowledge, this said settle-
203 ment and releases were executed with the knowledge and assent of said James. State fully all that you know upon this subject.

17. State whether the attempt to foreclose the said mortgage upon said stock, by a sale thereof, or any of the acts of the Atlantic De Laine Co. or of yourself, or any of the officers of said company, in relation to said stock, or the sale thereof, was, to your knowledge, with the intent on your part, or on the part of said defendant corporation, or its officers, or any of them, of deterring purchasers from bidding at said sale at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reasons for such attempt, so far as they are known to you.

18. State whether or not the said James, since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding, State fully your knowledge upon this subject.

19. State any other matter or thing material to this case within your knowledge.

A. PAYNE,
Solicitor for Atlantic De Laine Co. and George W. Chapin.

Cross-interrogatories.

The complainant objects to the 3d, 4th, 5th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 17th interrogatories to Edwin Hoyt, as calling in whole or in part for matters irrelevant to any issue in said cause, and in part as calling for opinions and not facts, and without waiving said objections puts the following interrogatories, de bene:

1. Were you a stockholder in said Atlantic De Laine Company from its origin till March, 1853?

2. State what amount of stock yourself or the firm to which you belonged were the owners of, and state particularly the amount and date of each payment made by you or your firm towards said stock, and whether by cash, note, or acceptances, and if by note or acceptance, state whether or not there were any renewals of such paper, and when it was finally paid.

3. State whether or not yourself or your firm ever had the use of the name of the Atlantic De Laine Co., by way of accommodation, on commercial paper prior to March, 1853. If so, give a description of such paper.

4. If in answer to the 5th direct interrogatory you say the mill
204 was not completed and the machinery not furnished according to contract, state whether any specification of such deficiencies was ever given to said James or said Frieze in writing. If so, annex copies to your deposition.

5. If no such specifications were made out as are referred to in the last interrogatory, make out and annex such specifications now.

6. State whether you had any personal interview with Charles T. James from the 1st of January, 1853, till the 4th of March, 1853, and if so, state where said interview took place, and whether anything testified to by you in your answers to the direct interrogatories took place at such interviews, and if so, what portion of that which you have so testified to.

7. What, if anything, did you have to do with the accounts of said De Laine Company?

8. Annex copies of any accounts which you know to have been exhibited to Charles T. James or Lyman B. Freize.

9. If in answer to direct interrogatories 14, 15, and 16 you state that you had personal knowledge of the matter inquired of, state particularly how, when, and of whom you acquired such knowledge, and if you say that you acquired such knowledge or any part thereof by correspondence, annex copies of such correspondence.

10. Was said James present at any offer of his friends as inquired of in the 14th interrogatory? If not, state where, to your knowledge, he then was.

T. A. JENCKES,
For Complainant.

Deposition of Edwin Hoyt.

Deposition of witness produced, sworn, and examined the first day of June, 1861, at the city of New York, under and by virtue of a commission issued out of the circuit court of the United States for the Rhode Island district, in a certain cause therein depending and at issue, between Charles T. James, complainant, and the Atlantic De Laine Company and others, respondents.

EDWIN HOYT, of New York, commission merchant, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the respondents, doth depose and say as follows:

205 To the first interrogatory, he saith: I am 57 years of age. Reside in the city of New York, and am engaged in the domestic commission business.

To the second, he saith: The late firm of Hoyt and Tillinghast, of which I was a member, held stock of the Atlantic De Laine Company. I am a director, and have held that office since December, 1854.

To the third, he saith: Some time in the summer of 1851, Charles T. James, the plaintiff, applied to the treasurer of the Atlantic De Laine Company for the loan of $75,000, which could not be acted on by the company without the delay consequent upon giving notice of a corporate meeting. The following gentlemen were then called together: Josiah Chapin, George W. Chapin, Joseph Lea, Joseph Carpenter, and myself, and the application for the loan laid before them. James, the plaintiff, said it was absolutely necessary for him to have the said loan, in order to enable him to keep his contract, or carry it out with the Atlantic De Laine Company. After due consideration, we decided to make the loan; the stockholders agreeing to take their pro rata proportion, except Day, Owen & Co., who held only three shares, and were not present, to be

secured by a mortgage upon James Read and Runnels' estate, in accordance with the terms particularly set forth in the mortgage at that time made.

To the fourth, he saith: There was no understanding or assurance of any kind, and in behalf of any one, agreed to by me or the other stockholders, which is not contained in the mortgages and assignment alluded to in this interrogatory. It would have amounted to nothing different from the written terms.

To the fifth, he saith: I know that the mill was not completed and the machinery was not furnished according to the contract with James. I recollect it was frequently the subject of conversation among the directors that the loss sustained by the company was very great in consequence of the mill not being completed and the machinery furnished until several months after the time agreed upon by James in the contract.

To the sixth, he saith: I have no knowledge that the Atlantic De Laine Company ever made a formal claim upon James, or Frieze, his assignee, for damage on account of the non-fulfillment of the contract, though I know the subject of claiming damages was frequently
206 discussed among the directors and stockholders, and $50,000 considered within the loss sustained.

To the seventh, he saith: I believe the claims against James, referred to in this interrogatory, were just and legal, and were made with no intention to delay or hinder a settlement between the said company and the said James; and I know that I had no such intentions.

To the eighth, he saith: I never knew or heard that said claim hindered or was in the way of a settlement between the company and James, or his assignee.

To the ninth, he saith: Some time in the spring of 1852, James made some propositions to the company for a settlement, but its offers were not satisfactory, and were declined by them. I do not remember details. I was not treasurer of the company.

To the tenth, he saith: No such neglect or refusal to render any settlement, referred to in this interrogatory, to James or Frieze, was made to my knowledge.

To the eleventh, he saith: I have no knowledge that any such request referred to in this interrogatory was ever made by James or his assignee.

To the twelfth, he saith: I have always understood and believed that both James and his assignee were allowed access at all times to the books containing the accounts referred to in this interrogatory.

To the thirteenth, he saith: I have no knowledge that any such complaint was ever made by James or his said assignee.

To the fourteenth, he saith: I have no knowledge of such offer having been made by James' friends, or any one else, as referred to in this interrogatory.

To the fifteenth, he saith: A proposition was made for a full and final settlement between the company and Frieze, the assignee, by which the company were to take all James's stock in said company for their demand against him. The directors considered the stock almost or quite worthless; yet, being desirous to close their accounts and connection with James, and despairing of getting anything more from him, concluded to settle in that way. Am not positive who first suggested the re-
207 leases. Think I did. I considered it proper that a full and final settlement should be made on both sides. We therefore gave releases on both sides.

To the sixteenth, he saith: I have no positive knowledge that James was consulted in the settlement, but considered that Frieze, the assignee, had full authority to make the settlement.

To the seventeenth, he saith: The mortgage was foreclosed and the security under it sold, for the purpose of getting back the loan to James under said mortgage; and I have no knowledge that any act of the company, or any of its officers or members, ever hindered, or was intended to hinder, any one from bidding on any securities sold under said mortgage.

To the eighteenth, he saith: I have been informed that there are claims against James still unsettled.

To the nineteenth, he saith: I remember nothing further material to this case.

In answer to cross-interrogatories witness says as follows:

To first cross-interrogatory, he saith: I was in connection with my firm, but not individually.

To second cross-interrogatory, he saith: The firm of which I was a member owned $25,000 of stock, at par, in said company; and the amount and date of each payment, and acceptances and cash in payment for the same, are particularly set forth in the schedule hereto annexed, marked "A." There were no renewals of such paper or acceptances, and it was paid at maturity.

To the third cross-interrogatory, he saith: Neither myself or my firm ever used the name of said company, by way of accommodation, prior to March, 1853, or at any other time.

To the fourth cross-interrogatory, he saith: To this question I have already answered in my answer to fifth direct interrogatory.

To the fifth cross-interrogatory, he saith: I have no means of giving such specifications, but refer to the books and memorandums of the company for the same.

To the sixth cross-interrogatory, he saith: I do not recollect ever having any personal interviews with James between first of January and fourth of March, 1853.

208 To the seventh cross interrogatory, he saith: I had nothing to do with the accounts of the De Laine Company; they were kept by the treasurer at his office in Providence.

To the eighth cross-interrogatory, he saith: I have no knowledge what accounts were exhibited to C. T. James, or L. B. Frieze, assignee, and consequently cannot give copies.

To the ninth cross-interrogatory, he saith: I was personally present at the time of the settlement mentioned in my answer to direct interrogatory fifteenth, and in this way acquired my knowledge thereof. I had no correspondence with any one. In my answers to interrogatories fourteenth and sixteenth I do not speak of any personal knowledge of the matter enquired about, as I have none.

To the tenth cross-interrogatory, he saith: I have already stated, in my answer to direct interrogatory fourteen, that I know nothing of any such offer having been made.

EDWIN HOYT.

Sworn to before me this first June, 1861.

R. E. STILWELL,
U. S. Commissioner.

Commissioner's fees, $9.49.

Date.	Paid in.	Dated.	Drawn by—	Endorsed by—	Time.	Due.	Amt.	How paid.
1851.		1851.						
Jan'y 23	Acceptance	Jan. 21	Geo. W. Chapin, atty	Chas. T. James	6 months	July 24, 1851	5,000	At Merchants' Bank.
Feb'y 17	do	Feb. 15	Geo. W. Chapin, agt	do	6 months	Aug. 18, 1851	3,500	At Bk. of Commerce.
March 14	do	Mar. 31	Geo. W. Chapin, atty	do	6 mos. from 15th M ch	Sept. 18, 1851	3,000	At Merchants' Bank.
May 7	do	Apr. 15	Geo. W. Chapin, atty	do	6 months	Oct. 18, 1851	2,000	At Manhattan Co.
" 15	do	May 13	Geo. W. Chapin, atty	do	6 mos. from 15th May	Nov. 18, 1851	4,000	At Manhattan Co.
June 13	do	June 12	Geo. W. Chapin, tr	do	6 mos. from 15th June	Dec. 18, 1851	3,000	At State Bank.
" 7	Cash paid		do	Sight draft			1,500	
" 14	do	do	do	do			500	
August 28	do	do	do	do			500	
Oct. 2	do	do	do	do			500	
" 16	do	do	do	do			500	
1852.								
Jan'y 7	do	do	do	do			500	
Feb'y 18	do	do	do	Draft dated Dec. 15th, 1851, at 2 months. Due 18th Feb			500	
							25,000	

Exhibit A.

R. E. STILLWELL, *U. S. Com.*

210 *Paper marked "A," referred to in deposition of Geo. B. Holmes.*

113 shares, cost, $1,000 each		$113,000 00
Less 30 per cent		33,900 00
		79,100 00
Balance due on contract		29,000 00
		$108,100 00
Claims against James mortgage	42,350 00	
Assignee's acknowledged acct	53,324 00	
Claims against contract	15,000 00	
	$110,674 00	
Minus		$2,574 00

The mill was contracted to be finished August, 1851; it was completed February, 1852.

There is also a claim for non-fulfillment of contract, subject to decision of referees appointed and agreed upon—no interest charged on money advanced to assignee.

Motion and order as to depositions of Chapin & Frieze.

In the matter before the district judge, the petition of the Atlantic De Laine Co. for an order to take the testimony of George W. Chapin and Lyman B. Frieze, it is ordered that the prayer of the said petition be granted, without prejudice, and that the testimony of said Chapin and Frieze may be taken as prayed for, subject to all just exceptions.

March 21st, 1861.

Granted without prejudice, by consent.

JOHN PITMAN,
District Judge.

211 *Motion to strike from record depositions of Josiah and George W. Chapin.*

The complainant moves the court that the depositions of Josiah Chapin and of George W. Chapin be stricken out of the record in said cause, for the reason that both of said witnesses are owners of, or interested in, the stock of the defendant, Carpenter, and that said George W. Chapin is a party defendant in said suit.

By his solicitor,

212 T. A. JENCKES.

213 November term, 1861.—Second day.

The cause in equity, Charles T. James vs. The Atlantic De Laine Company, called for hearing upon motion of plaintiff's counsel to strike from the record the testimony of George W. Chapin, Josiah Chapin, Joseph Lea, and Edwin Hoyt as parties defendants in said cause.

Heard, and ordered that the deposition of George W. Chapin be stricken out; as to the others, held for advisement.

November term, 1861.—Fifth day.

The cause in equity, Charles T. James vs. The Atlantic De Laine Company, called for hearing upon motion of plaintiff's counsel to strike from the record the deposition of Lyman B. Frieze as a party defendant in said cause.

Heard, and held for advisement.

And on the same day said cause was called for hearing upon the bill, answers, and testimony taken in said cause, and was heard and held for advisement.

And said cause being continued to the June term, 1862, it was again re-opened for the purpose of taking further testimony; and, upon motion, it was ordered, by consent of parties, that the time for taking further testimony be extended to the first day of November next; and that both parties, in the mean time, are authorized to take such further testimony as they may see fit, under the amendment to the 67th rule in equity, adopted March 17th, 1862; and that Joseph S. Pitman be appointed examiner for that purpose.

November 17, 1862.—Death of complainant suggested.

Bill of revivor.—Filed Jany. 6, 1863.

RHODE ISLAND DISTRICT, *sc:*

To the honorable the judges of the circuit court of the United States for the district of Rhode Island:

The bill of complaint of Lucinda James, administratrix of Charles T. James, late of the city, county, and State of New York, and a
214 citizen of the State of New York, against the Atlantic De Laine Company, a corporation created by the legislature of the State of Rhode Island, and located and transacting business in the county of Providence, in said State, a citizen of the State of Rhode Island, and against George W. Chapin, of the city and county of Providence, in said State, a citizen of said State of Rhode Island, and against Lyman B Frieze, of said Providence, a citizen of said State of Rhode Island.

And thereupon your oratrix complains and says that her said husband, Charles T. James, late of the city, county, and State of New York, but now deceased, and formerly a citizen of said State of New York, did, on or about the first day of March, A. D. 1859, and while he was a citizen of said State of New York, exhibit his original bill of complaint in this honorable court against the said Atlantic De Laine Company—George W. Chapin and Lyman B. Frieze as the defendants thereto—thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying relief thereupon as set forth in said bill, for the contents whereof and for said prayer for relief your oratrix begs leave to refer to the original thereof now remaining in this court.

And your oratrix further sheweth that process duly issued against said defendants, who were duly served thereon and entered their appearance, and put in their answers thereto, the said Atlantic De Laine Company and said George W. Chapin jointly, and the said Lyman B. Frieze separately; that the said James filed his replications thereto, and thereupon, issue being joined, the said parties took testimony in said cause under the rules of this honorable court, which testimony was duly published, and said cause set down for final hearing, and was ar-

gued before your honors at the November term of this court, A. D. 1861; that thereafter, by order of the court made at the June term thereof, A. D. 1862, the said cause was re-opened for the purpose of taking further testimony, and was set down for further argument at the November term of this court, A. D. 1862.

And your oratrix further sheweth that the said Charles T. James departed this life on or about the day of October, A. D. 1862, intestate; and that your oratrix hath obtained letters of administration upon the estate of her said deceased husband in said State of Rhode Island, and hath thereby become, and now is, his legal representative.

And your oratrix further sheweth that the said suit and proceedings having become abated by the death of said Charles T. James, your
215 oratrix is, as she is advised, as the personal representative of the said Charles T. James, entitled to have the said suit and proceedings revived against the said defendants, and to have the cause put in the same state and condition as the same was in previous to the death of said Charles T. James.

To the end, therefore, that the said defendants may answer the premises, and that the said suit and proceedings which so became abated as aforesaid may stand revived and be in the same condition as the same were in at the time of the death of the said Charles T. James, or that the defendants may shew good cause to the contrary—

May it please your honors to grant unto your oratrix a writ of subpœna to revive, issuing out of the clerk's office of this court, and under the seal thereof, to be directed to the said Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, thereby commanding them at a certain day, and under a certain penalty therein named, personally to be and appear before this honorable court, and then and there to shew cause, if they can, why the said suit thereon had should not stand and be revived against them, and be in the same condition as the same was at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet.

LUCINDA JAMES, *Administratrix*,
By her Solicitor, T. A. JENCKES.

Subpœna.

RHODE ISLAND DISTRICT, *sc:*

[50-ct. revenne-stamp, duly canceled.]

[L. S.] The President of the United States of America to the Atlantic De Laine Company, a corporation created by the legislature of the State of Rhode Island, and located and transacting business in the county of Providence, in said State, a citizen of the State of Rhode Island, George W. Chapin and Lyman B. Frieze, both of the city of Providence and citizens of the State of Rhode Island, greeting:

For certain causes offered to our circuit court for the first circuit within and for the Rhode Island district, in chancery, we hereby command and strictly enjoin you and each of you, that laying aside all other matters and things, and notwithstanding any other excuse, you and each of you personally appear at the clerk's office of said court in Providence, on the first Monday of February next, being the rule-
216 day of said court, and then and there full, true, and perfect answer make, upon your several corporal oaths, to the bill of complaint of Lucinda James, administratrix of Charles T. James, late of the city,

county, and State of New York, now filed of record in the clerk's office of said court, and to do and receive whatever our said court shall order against you in the premises in this behalf; and hereof fail not under the pains and penalties that may accrue in consequence of neglect thereof.

And the marshal of said Rhode Island district, or his deputy, is hereby commanded to make service of this writ by reading the same to the said Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, or by leaving a true and attested copy hereof at their several last and usual places of abode twenty days before the rule-day aforesaid.

Witness the Hon. Roger B. Taney, our Chief-Justice, at Providence, this 6th day of January, A. D. 1863.

HENRY PITMAN, *Clerk.*

MEMO.—The appearance of the respondents in the suit is to be entered in the clerk's office on or before the return-day of this writ, otherwise the bill may be taken pro confesso as against those not appearing.

Marshal's return.

RHODE ISLAND DISTRICT, *sc:*

PROVIDENCE, *January 7th*, 1863.

I have notified the within-named respondents by leaving a true and attested copy of the within at the counting-room of George W. Chapin, treasurer of the Atlantic De Laine Company, and true and attested copies of the same with George W. Chapin and Lyman B. Frieze, as commanded.

ALBERT SANFORD,
U. S. Marshal.

3 services, $6.00; 3 copies, $1.50; 3 miles travel, 18 cents—$7.68.

Answer of Atlantic De Laine Co. et al.—Filed June term, 1863.

The joint and several answer of the Atlantic De Laine Company and George W. Chapin to the bill of revivor of Lucinda James, administratrix.

217 These defendants, answering, admit that the said Charles T. James exhibited his bill of complaint against these defendants as in this bill of revivor is stated, and they believe, and therefore admit, that such proceedings were had upon said bill exhibited by the said Charles T. James, as in this bill of revivor are set forth, but for greater certainty these defendants crave leave to refer to the said bill and the proceedings therein now remaining of record in this honorable court.

They admit that the said James departed this life as in this bill is alleged, and that the said Lucinda James was duly appointed administratrix upon the estate of the said Charles T. James, and is now his legal representative, and is entitled to have the said suit and proceedings revived against these defendants, and put in the same condition as the same was previous to the death of the said Charles T. James.

ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treasurer.*
GEORGE W. CHAPIN.

RHODE ISLAND DISTRICT, *sc:*

In the city of Providence, in said district, on this 15th day of June, 1863, personally appeared Geo. W. Chapin, treasurer of the Atlantic

De Laine Co., and in said capacity and individually made oath that the facts set forth in the above answer so far as they are stated of his own knowledge are true, and so far as they are stated on information and belief he believes them to be true. Before me,

JAMES H. PARSONS,
U. S. Commissioner for said R. I. District.

[5-cent revenue-stamp, duly cancelled.]

And at said June term, 1863, upon motion of defendants' counsel it was ordered that the time for taking testimony be further extended to the 1st of October next.

And said cause being further continued to the June term, 1864, upon motion of defendants' counsel it was ordered that the time for taking testimony be extended to the 1st of October next.

And said cause being further continued to the November term, 1864, upon motion of defendants' counsel it was ordered that the time for taking testimony be extended to the 1st of April, 1865.

218 And also upon motion of defendants' counsel for leave to take the testimony of George W. Chapin, a co-defendant, subject to all just exceptions, it was ordered accordingly.

And upon the 25th of March, 1865, the following motion and order were entered:

Motion.

The said Atlantic De Laine Company moves the Hon. J. R. Bullock, United States district judge for the district of Rhode Island, for an order to take the deposition of Lyman B. Frieze, one of the defendants in the above cause, for his co-defendants, subject to all just exceptions.

By R. W. GREENE,
Solicitor for Atlantic De Laine Co.

I agree to an order as above prayed for without waiving any objections to the admissibility of such deposition.

T. A. JENCKES,
For Complts.

MARCH 22, 1865.

Ordered on the within motion that the said Atlantic De Laine Co. have leave to take the deposition of the said Lyman B. Frieze for his co-defendants, said deposition to be taken before Joseph S. Pitman, esqr., a commissioner, appointed by the U. S. circuit court for this district, and to be subject to all just exceptions as to its admissibility or otherwise. Said deposition to be taken under the order extending the time for taking testimony to the 1st of April, 1865.

J. R. BULLOCK,
Judge U. S. District Court, R. I. District.

219 DEFENDANTS' DEPOSITIONS.

Deposition of Josiah Chapin.

I, JOSIAH CHAPIN, of the city of Providence, being duly engaged, on affirmation depose and say:

1st question by R. W. Greene, esq., for the respondents.

(J. H. Parsons, esq., counsel for the complainant, objects to the witness on the ground of incompetency.)

State your age, residence, and occupation.

Ans. My age is seventy-six years; city of Providence, R. I. I am a retired merchant.

2d ques. Are you a member, or do you hold any office in the Atlantic De Laine Co.? If so, what, and how long have you held the same?

Ans. I am a member of the Atlantic De Laine Co. I am its president, and have been since its organization.

3d ques. State with whom the negotiations which resulted in the loan of seventy-five thousand dollars, and the mortgage to secure the payment of the same, were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

(The counsel for the complainant objects to this question as calling in whole or in part for matter irrelevant to any issue in said cause, and in part as calling for opinions and not facts.)

Ans. The negotiations for the loan of seventy-five thousand dollars to Gen. James, in the fall of 1851, was conducted by Messrs. Hoyt, Lea, Carpenter, George W. Chapin, and myself. We were informed by Gen. James that he could not, without a loan of seventy-five thousand dollars, go on to complete his contract with the Atlantic De Laine Co.; and if so made to him, he would apply a large part of it to that purpose.

4th ques. State whether or not the said mortgage was made, and the provisions in said assignment requiring the assignee to complete the contract with the Atlantic De Laine Co. were insisted upon, upon any understanding or assurance on your part. If so, upon what understanding or assurance, and in whose behalf? State fully and particularly your knowledge upon the subject, and give your means of knowledge.

(The counsel for complainant objects to this question as to the 3d question.)

220 Ans. The loan was made to Gen. James as he requested. Gen. James made several mortgages to secure the payment of the seventy-five thousand dollars to the parties loaning the money, or their trustee. Gen. James said at the time the loan was made, in case of his failure the Atlantic De Laine Co. should be protected, as was done in his assignment. I understood that the assignment of Gen. James provided and required the assignee to complete the contract with the Atlantic De Laine Co., and among other parties, I think, from the assignee, Mr. Frieze. I think I am certain about it. There was not any understanding or assurance ever given to Gen. James by me or any one of the stockholders of the company, to my knowledge, in connection with said mortgages or assignment.

5th ques. State whether the said mill was completed, and the said machinery furnished, according to the contract with said James, mentioned in the bill of complaint. If you say they were not, give your knowledge and your means of knowledge upon that subject.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. The Atlantic De Laine Mill and machinery contracted for by Gen. James was not completed according to contract by Gen. James, and not ready for operation for a long time after the time named in the contract had expired. I was frequently at the Atlantic De Laine Mill, and derived my knowledge from that source by personal examination—from that source, as well as from other means; and the loss to the Atlantic De Laine Co. was very great in consequence of Gen. James not

completing his contract as agreed with the company, which was to be completed August 1st, 1851.

6th ques. State whether or not the said Atlantic De Laine Co. made any claim upon the said James, and upon the said Frieze, his assignee, for anything connected with or on account of said contract. If you answer that they did, state fully and particularly the *note* and extent of such claim. State how, and to whom the same were made, and what was said and done in relation to the same.

Ans. The subject of the claim for damages on Gen. James was the subject of frequent conversations with the directors; but I cannot say whether any direct claim was made in writing on James or his assignee until a statement of the company's books was furnished Frieze in February, 1853. I have no doubt they were cognizant of such a claim before.

7th ques. State whether the claims aforesaid, at the time when so made, were by you believed to be just and legal claims against
221 said James and his estate, and state whether the same were made to your knowledge with any design to hinder or prevent a settlement between the said company and the said James.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. I never had any doubt the claims on Gen. James made by the company were just and legal claims on him and his estate. They were not made with any design to hinder or prevent a settlement.

8th ques. State whether the said claims did, to your knowledge, in fact, hinder or prevent any settlement between the said company and the said James.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. The claims of the Atlantic De Laine Co. on Gen. James did not, to my knowledge, hinder or prevent the settlement between Gen. James or his assignee and the company.

9th ques. State all the facts in your knowledge and recollection relating to any attempted settlement or reference between said company and said James prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James or his assignee and by yourself, as president of said company, in relation to such attempted settlement, if any.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. I know that the directors were desirous to make a settlement with Gen. James and with his assignee, and Gen. James made propositions for a settlement in 1852, and, as I understood, met some of the directors in New York several times. I was not present at any of those meetings.

10th ques. State whether or not, to your knowledge, the said Atlantic De Laine Co. ever neglected and refused to render any settlement of their accounts with the said James or with his assignee, to said Frieze.

Ans. The Atlantic De Laine Co. never, to my knowledge, refused or neglected to render any statement of their accounts with Gen. James or his assignee, Mr. Frieze.

11th question. State whether or not the said James or his said assignee ever requested to be furnished with such accounts, to your knowledge and recollection.

Ans. Gen. James or his assignee never, to my knowledge, requested to be furnished with their accounts with the Atlantic De Laine Co., un-

less it was at the time the final settlement was made with Mr. Frieze, assignee, when they were furnished.

222 12th ques. State whether or not the said James and his said assignee had at all times full means of knowing the state of such accounts.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. I have good reason for the belief that they had access or means of knowing the state of their account with the Atlantic De Laine Co. at all times.

13th ques. State whether or not the said James or his said assignee ever, to your knowledge, complained that they had or could not obtain a knowledge of the state of such accounts.

(The counsel for the complainant objects to the question as to the 3d question.)

Ans. They never did; and if they had, I should have seen that their request was complied with as far as in my power to do so.

14th ques. State if you know anything in relation to an offer by the friends of said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James', interest in the property of the Atlantic De Laine Co. State all that you know in relation to that subject, if anything.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. I do recollect hearing that some propositions by some person to pay a small amount of his indebtedness, but what the conditions were I do not know. I heard something about it as I hear stories about street.

15th ques. State all the circumstances under which the mutual release between the said Atlantic De Laine Co. and the said Frieze, mentioned in said bill, were made. State who first suggested the same, and when and where. State what was done in pursuance of such suggestion, and state fully and particularly all that was done in relation to the same by yourself or the said Frieze.

(The counsel for the complainant objects to this question as to the 3d question.)

Ans. Mr. George B. Holmes called at George W. Chapin's counting-room at or near the time of settlement, and. I believe, proposed that an effort be made for a settlement between the Atlantic De Laine Co. and Lyman B. Frieze, assignee of Gen. James. He appeared to me to be acting under the advice of Gen. James, and advisor of Mr. Frieze, as assignee. I then and still believe that Mr. Holmes and the assignee, one or both, were directed by Gen. James in regard to the proposed settlement, from their course pursued. Who made the first proposal

223 which resulted in the settlement, I am unable to call to mind. The amount due from Gen. James' estate to the Atlantic De Laine Co. was about $85,000 in addition to their claim for damages, and was believed by the directors to be greatly more than the value of James' stock in the company, and they refused to settle with Gen. James' assignee on the terms proposed—that is, allow for the stock the amount of James' indebtedness. Whether there was any value to the stock at that time, was very uncertain. After learning that we had nothing to expect from the assignee, though the Atlantic De Laine Co. were preferred creditors in the first class, if we did not accept the proposal, and a dark prospect for the future from Gen. James, I urged the directors, under these circumstances, to settle the business, though no one could think more unfavorably of the worth of the stock than myself. The directors very unwill-

ingly reconsidered their decision, and accepted the proposal of James assignee, and thereupon executed mutual releases between the Atlantic De Laine Co. and Lyman B. Frieze, assignee of Charles T. James.

16th ques. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge and assent of said James. State fully all that you know upon this subject.

Ans. I did at the time, and do now, believe that the settlement was made and the releases executed by Gen. James' knowledge and approval. I don't think I had personal knowledge of the execution of the releases, but think and feel quite sure I have seen them. I don't think I saw them executed. I think I saw them after they were executed.

17th ques. State whether the attempt to foreclose the said mortgage upon said stock by a sale thereof, or any of the acts of the Atlantic De Laine Co., or yourself, or of any of the officers of said company, in relation to said stock, or the sale thereof, was, to your knowledge, with the intent on your part or on the part of the said defendants' corporation or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reasons for such attempt, so far as they are known to you.

(The counsel for the complainant objects to the question as to the 3d question.)

Ans. The Atlantic De Laine Co. did no act, nor did any of its officers, to deter other persons from becoming purchases, to my knowledge, but did all they could honestly to induce others to become the pur-
224 chasers, as I have good reason to know. They already held more stock than they wished to hold, and were not purchasers, but sellers, and the company greatly needed available means to meet their indebtedness, which was much too large for the amount of paid-up capital.

18th ques. State whether or not the said James, since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding. State fully your knowledge on this subject.

Ans. I can't answer that question. I don't know. I have no means of knowing, but suppose he was greatly insolvent.

19th ques. State any other matter or thing material to this case within your knowledge.

Ans. The very strong fear of the directors of the little worth of the stock of the Atlantic De Laine Co. at the time the proposed compromise settlement with Gen. James' assignee was before the directors, was more than realized. One of the firms that were stockholders were determined to be clear of their individual responsibility for the debts of the company, if possible. They offered the Atlantic Co. their stock without consideration, giving it to the company, but, as they were persons of wealth, the company refused to accept the offer. They then came forward and offered not only to the company their stock, but to pay the company five hundred dollars per share, in addition to the gift of the stock; and under the circumstances the company accepted the offer, and immediately a much larger stockholder made a like offer, which the directors declined at once.

Cross-examination:

The counsel for the complainant, without waiving the foregoing objections, puts the following interrogatories de bene:

1st cross-ques. Were you a stockholder in said Atlantic De Laine Co. from its origin till March, 1853?

Ans. The Globe Printing Co. was an original stockholder in said Atlantic De Laine Co., in which company I was a stockholder. I was not a stockholder in any other way. The Globe Printing Co. are not now stockholders. I am now a stockholder in the Atlantic De Laine Co.

2d cross-ques. State what amount of stock yourself or the firm to which you belonged were the owners of; and state particularly the amount and date of each payment made by you or your firm towards said stock, and whether by cash, note, or acceptance, and if by
225 note or acceptance, state whether or not there were any renewals of such papers, and when it was finally paid.

Ans. The Globe Printing Co. owned twenty-five shares originally. The manner and when paid is to be found stated in the paper here presented, marked "A." No renewals were ever made, to my knowledge, other than is found in said paper.

3d cross-ques. State whether or not yourself or your firm ever had the use of the name of the Atlantic De Laine Co., by way of accommodation on commercial paper, prior to March, 1853. If so, give a description of such paper.

Ans. It never did, to my knowledge; neither the company nor myself.

4th cross-ques. If, in answer to fifth direct interrogatory, you say the mill was not completed and the machinery not furnished according to contract, state whether any specification of such deficiencies was ever given to said James or to said Frieze in writing. If so, annex copies to your deposition.

Ans. I cannot answer that question. I do not know.

5th cross-ques. If no such specifications were made out as are referred to in the last interrogatory, make out and annex such specifications now.

Ans. I have no means of making out any such specifications.

6th cross-ques. State whether you had any personal interview with Charles T. James from the 1st of January, 1853, till the 4th of March, 1853; and if so, state where such interview took place, and whether anything testified to by you in your answers to the direct interrogatories took place at such interview; and if so, what portion of that which you have so testified to.

Ans. I cannot call to mind any conversation with Gen. James at the time referred to. I may have had conversation with him; but I do not remember what it was, if I did have it.

7th cross-ques. What, if anything, did you have to do with the accounts of said De Laine Co.?

Ans. I had access to them at all times, as president of the company.

8th cross-ques. Annex copies of any accounts which you know to have been exhibited to Charles T. James or Lyman B. Frieze.

Ans. I cannot do it. I never presented any accounts to either of them personally.

9th cross-ques. If, in answer to direct interrogatories 14, 15, and 16, you state that you had personal knowledge of the matters enquired of, state particularly how, when, and of whom you acquired such
226 knowledge; and if you say that you acquired such knowledge, or any part thereof, by correspondence, annex copies of such correspondence.

Ans. In relation to the matters enquired of in the 14th direct interrogatory, if I had any personal knowledge of them, I had my information from George B. Holmes. I think I heard him speak of it in the counting-room, though I am not positive about it, but I have no great doubt on the subject. In relation to the matters enquired of in the 15th

direct interrogatory, I acquired the knowledge of the facts stated in my answer to that interrogatory in the counting-room of George W. Chapin. I do not know whether Mr. Frieze was present or not. I presume he was present. George B. Holmes and the directors were present. Holmes seemed to be the man who managed all the business; it seemed to be pretty much under his control. I acquired that knowledge at the time of the settlement between Frieze and the Atlantic De Laine Co. In relation to the matters enquired of in the 16th direct interrogatory, I had no personal knowledge any more than is stated in my answer to that interrogatory.

10th cross-ques. Was said James present at any offer of his friends, as inquired of in the 14th interrogatory? If not, state where, to your knowledge, he then was.

Ans. I presume not. I never heard that his friends ever did make any offer that I recollect. I have no recollection that any offer was made, and cannot state the whereabouts of Gen. James at the time alluded to in the question.

JOSIAH CHAPIN.

Examination adjourned March 21st to March 22d, at 10 o'clock a. m. Adjourned to March 25th, 1865.

Signed and affirmed to this 25th day of March, A. D. 1865, before me.

JOSEPH S. PITMAN, *Examiner.*

Witness fees: 1 day's attendance, $1 50; 4 miles' travel, 20—$1 70.

227 *Payments made by Globe Printing Co. for stock in the Atlantic De Laine Co.*

1851.		
Jan.	21, Accepted Geo. W. Chapin, attorney, draft due and paid May 24, 1851	$5,000
Feb.	15, Accepted Geo. W. Chapin, attorney's, draft at 6 mos., due and paid Aug. 15 | 18, 1851	3,500
March	15, Accepted Geo. W. Chapin, attorney's, draft at 6 mos., due Sept. 15 | 18, 1851, and paid Sept. 16, 1851	2,500
April	15, Accepted Geo. W. Chapin, attorney's, draft at 6 mos., due Oct. 18, paid Oct 17, 1851	2,000
May	15, Accepted Geo. W. Chapin, attorney's, draft at 6 mos., due Nov. 18, and paid same date	4,500
June	12, Accepted Geo. W. Chapin, attorney's, draft at 6 mos., due Dec. 12 | 15, paid Dec. 13, 1351	3,000
	30, Paid Geo. W. Chapin, attorney, cash	1,500
Dec.	30, do do do do	3,000
		$25,000

A.

Annexed to the deposition of Josiah Chapin by me this 21st March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Deposition of Lyman B. Frieze.

I, LYMAN B. FRIEZE, of the city of Providence, in the State of Rhode Island, being duly sworn, on oath depose and say:

(Complainant objects to the witness as incompetent.)

1st question by R. W. Greene, esq., for the respondents. What is your age, residence, and occupation?

Ans. My age is forty. I live in the city of Providence, and am in the employ of A. & W. Sprague, and collector of the internal revenue for the first district of Rhode Island.

2d ques. State whether or not you were assignee of Charles T. James?

Ans. I was.

3d ques. What amount of property came into your hands under said assignment, and what was realized from the same?

Ans. It is difficult for me to tell what amount of property came into my hands—that is, the value of the property. I rendered a correct schedule thereof at a previous deposition, and furnish a similar schedule now, which I hereto annex, marked "A." The amount of funds realized by me from the property which passed through my hands was about twenty-eight thousand dollars. I had then, at the time said deposition was given, and have now, no property belonging to said estate. I could not give the value of the property passed by the assignment into my hands from the fact of its having been mortgaged, pledged as collateral security, or under attachment. The real estate in Providence, Warwick, and Scituate was sold under mortgage, and the proceeds retained by the mortgagees. The stock of the De Laine Co. was surrendered under the settlement made in March, 1853. The stock of the Saunders Cotton Mill, Rockport Steam Mill, Bank of America, National Bank, were pledged as collateral by James, surrendered to the parties holding them and having claims upon them. James' interest in the stock of the Conestoga, Harrisburg, and Reading Mills had been attached by Wm. Mason & Co., of Taunton, previous to the assignment, and these stocks, with the addition of those of the Montauk Manufacturing Co. and the Cannelton Mill, set down in the schedule, which I hereto annex, marked "A," were surrendered to said Mason & Co. by an arrangement made with them October 10th, 1851. The terms of the agreement were, that on the receipt of the certificate of said stocks Mason & Co. would waive their attachment and all demands for the amount of their claims thereon, being the sum of about $133,000; and they further agreed to send forward immediately the machinery then in their shop, which had been contracted for by James for the Atlantic De Laine Mill, and was ready for delivery. This machinery was valued at about $70,000, and was not included in their account of about $133,000. All the machinery was delivered, thus enabling me in part to complete the contract with the Atlantic De Laine Co., as I was directed to do in the first clause of the assignment. I believe the market value at that time of all the stocks surrendered to Mason was about $65,000.

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4th ques. What was the amount of the debts of said James, and what proportion, if any, of the same have been paid by you, as assignee, out of the assigned estate? What have you done with the proceeds of the property assigned to you?

Ans. I am unable to state the exact amount of the indebtedness, but believe it was between six and seven hundred thousand dollars. No debts contracted before the assignment, excepting on account of labor, were paid by me, but debts contracted after the assignment by me as assignee were paid. I have assented to compromises with some parties holding collaterals, to prevent the same from being sacrificed. The proceeds of the property received by me have been expended for labor done previous to the assignment, and in completing contracts as far as the means would allow, and in part payment of the expenses of the assignment.

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5th ques. State whether your charges and expenses as assignee have been paid.

Ans. All charges that I have made as assignee have been settled. I never made any charge, as assignee, for services.

6th ques. State whether or not you ever called, as assignee of said James, upon George W. Chapin, treasurer of the Atlantic De Laine Co., for a statement of the condition of said company. If you say that you did, state when, for what purpose, in what manner—whether verbally or in writing. State fully all that was said and done by said Chapin and yourself in relation to the same.

Ans. I did call on Mr. Chapin for a statement, but cannot recollect at what time. I think it was before the bill for an injunction was filed. I wished to obtain it for the purpose of ascertaining the condition of the company. I do not recollect anything that was said between Mr. Chapin and myself on the occasion. I merely recollect the fact of having called on him.

7th ques. State what was your purpose in filing the bill of complaint and for an injunction mentioned in this bill. State whether or not you were desirous of effecting a settlement with said Atlantic De Laine Co. and with said George W. Chapin; and if you state that you were, state why. Give the facts and circumstances which made such a settlement desirable, fully and particularly.

Ans. My purposes were for the objects stated in the bill which I filed. I did wish for a settlement of the business between the Atlantic De Laine Co.—the trustee and myself as assignee—and I thought it for the interest of all parties to have the business closed up.

8th ques. After said bill was filed, state whether or not a written statement of the condition of said company was furnished to you; and if so, by whom.

Ans. After the bill was filed, a written statement of the standing of the company was rendered by Mr. Chapin.

9th ques. State whether or not you had any difficulty in understanding said statement, whether you have ever discovered any errors in it, and whether you were deceived or misled by it.

Ans. I understood the statement very clearly, but objected to it on account of its not going into details sufficiently. At that time I wanted an exact account of the stock in the mill. I have no recollection of having found any errors in the statement, and do not think it deceived me.

230 10th ques. State whether the said George W. Chapin ever withheld, or showed any disposition to withhold, from you as assignee of said James, any statement of the condition of the Atlantic De Laine Co., or of their accounts, or his own account as trustee with said James or yourself, as assignee.

Ans. I do not think that Mr. Chapin shew any disposition to withhold an account, but I have called upon him for a statement at a time when he was unable to give it.

11th ques. State whether or not any information which you desired about your own accounts or those of Charles T. James was furnished to you by said Chapin when called for.

Ans. I have called on him at some times for accounts when he was unable to give them; but, as far as my recollection goes, he always furnished them subsequently.

12th ques. State whether or not you proposed, through any person, to negotiate for a settlement between yourself, as assignee, and the said

Atlantic De Laine Co. and said Chapin. If so, through whom was said proposition made?

Ans. I think I made no proposition to the De Laine Co. in the commencement of the negotiations for a settlement. Mr. George B. Holmes acted for me in the final adjustment of matters.

13th ques. State whether such negotiations were had, how long they continued, with what friends of Gen. James, if any, you consulted about the same; whether, while such negotiations were pending, you knew the condition of the Atlantic De Laine Co., of the assigned estate in your hands, and the state of the accounts between yourself and the said Atlantic De Laine Co. and said Chapin. Did such negotiations result in a settlement? and if you say that they did, state the fact which induced you to make said settlement.

Ans. Negotiations were had which continued for several days, and resulted in a settlement in the early part of March, 1853, when mutual releases were executed and placed in the hands of George B. Holmes until the individual releases of each member of the company could be obtained. I think Mr. Holmes, Nathaniel F. Potter, and Henry W. Gardner, who were then all friends of Gen. James, were consulted about the matter. I did know of the condition of the De Laine Co. from their statements, and from the general condition of business at that time. I knew what was the condition of the assigned estate, and of the accounts between myself and said Chapin and the company from my own book and from their accounts. I made the settlement on the ground that we thought it was the best thing that could be done for the estate.

231 14th ques. State whether or not you communicated to said James the fact that such negotiations were pending; if so, whether by dispatch or letter; whether any reply was received by you, and if so what. State whether you communicated to him the terms of the proposed settlement as finally agreed upon, and whether you received any answer to the same; and if so, what; and state particularly whether you received a dispatch from him; if so, produce the same; and if you say you cannot, state why not. State the contents of the same, or the substance thereof; give the date when you received the same; and if you say that you cannot, state whether it was before or after the date of the releases between you as assignee and the Atlantic De Laine Co.

Ans. I communicated to Gen. James the fact of the negotiations and the proposed terms by letter while the matter was pending, and I think I received a dispatch from him in reply. The dispatch is not in my possession, neither do I know where it is; but I think it was received before the execution of the releases. I don't recollect the contents of that dispatch. I cannot give the precise date. I turned over nearly all my documents and papers to Gen. James, which were connected with this matter.

15th ques. State how soon after such settlement you saw the said Charles T. James, and whether he then knew that the same had been made, and what, if anything, he then said in relation to the same, and whether, at that time, he found any fault with or objection to the same.

Ans. I cannot say how soon after the settlement I saw Gen. James, but he was aware of it before he returned to Providence from Washington. I do not recollect of his ever finding any fault with my settlement with the De Laine Co. till a short time before he commenced this suit.

16th ques. State whether before the time of said settlement you knew that the Atlantic De Laine Co. made a claim upon said Charles T. James and his estate for damages for the non-fulfillment of his contract with them. If so, about how long before?

Ans. George W. Chapin notified me, either by letter or verbally, of a claim by the De Laine Co. for damages on James for non-fulfillment of contract. I cannot say how long before.

17th ques. State whether, to your knowledge, repeated attempts, or any attempts, were made by yourself or said James to obtain a settlement with the Atlantic De Laine Co. previous to the time when said settlement was made. State all that you know about any such attempt or attempts.

Ans. Several negotiations were made by James to pay the
232 mortgages held by Chapin as trustee, but did not succeed in consequence of Mr. Chapin declining to transfer the mortgages to other parties. Chapin agreed to discharge the mortgages on payment of the debt due, but declined to transfer the same. I have no recollection of making any attempt to settle with the De Laine Co. other than the one which resulted in a settlement.

18th ques. State what you know, if anything, about offers by friends of said James to advance money for him in case he could make such settlement. State from whom you heard of such offers, if any. State whether you ever heard from said Charles T. James that such offers were withdrawn on account of his inability to obtain accounts or statements of its condition from said company, or anything to that effect. State whether said James ever complained to you that he could not get the accounts or statements of the company, and whether he ever requested you to get such accounts or statements.

Ans. I think James has told me that he had had such offers, but have no recollection of his saying that they were withdrawn because he could not obtain the accounts of the company. I think he has requested me to obtain a statement of their affairs and of his own accounts. I have no recollection of his ever having complained to me that he could not get the accounts or statements of the company.

19th ques. State whether you ever knew or heard of any agreement that said Charles T. James' interest in the Atlantic De Laine Co. should not be foreclosed, or disposed of, under the mortgage mentioned in this bill to the prejudice of said James, or any agreement to that effect upon that subject, or whether said James ever stated to you that there was any such agreement, or any agreement upon that subject. If so, state when and what he said.

Ans. I have no recollection of ever having heard of any such agreement.

20th ques. State whether or not all the charges made to you by the Atlantic De Laine Co. in their account with you were allowed by you, and whether they were correct and embraced within said James' contract, within your personal knowledge; and if you say that some of them you had no knowledge of, state upon whose authority you approved the same; and if you say A. R. Fiske, if so, state the relation of said Fiske to you, in your capacity as assignee, and to said James; and state whether or not there was, to your recollection, any disagreement between you and said Chapin as to what should be charged to your account.

233 Ans. All the items charged to my account, as assignee, by the De Laine Co., were allowed by me under an agreement made with them for advancing funds to complete the mill. All said charges I believe to be correct, and came under James' contract. Any bills that I did not fully understand were referred by me to Mr. A. R. Fiske, and on his approving them they were certified to by me, and then paid by Mr. Chapin for De Laine Co., and charged in my account. Mr. Fiske

was acting for me at the de laine mill, superintending the completion of the contract, and also acting in his own behalf, he being a party to the contract, in connection with Gen. James, for building the mill. Mr. Fiske was James' son-in-law. Mr. Chapin and myself had some discussion as to bills which were presented for payment, but they were always arranged.

21st ques. At the time of said settlement had you in your possession any accounts of the said Atlantic De Laine Co. and of George W. Chapin, trustee, against the said Charles T. James and yourself, as assignee? If so, and they are now in your possession, produce them; and if not, state in whose possession they are, when were they presented to you, by whom, and at whose request. State, as nearly as you can, the substance of such accounts. State whether, at that time, or at any time, you have discovered any error in said accounts, and particularly state whether, to your knowledge, said settlement was in any manner influenced by any error in said accounts. Was there any error in said accounts? If so, what was it?

Ans. I did have said accounts in my possession at the time of settlement, but have not now. I think these, with other papers, were delivered to Gen. James. I cannot say when they were presented to me. I suppose they were sent at my own request. I cannot now state the substance of them. I never have discovered any errors in the accounts, to my knowledge.

22d ques. State whether a statement of the affairs of the Atlantic De Laine Co. was demanded by you in the early part of the summer A. D. 1852. If so, state the circumstances, and what was done about it. State whether you ever told William H. Parkhurst that such a demand had been made.

Ans. I have no recollection of having demanded such a statement at that time, but I may have done so. I have no recollection of having told Mr. Parkhurst that such a demand had been made.

23d ques. State whether, or not, before or after you made a formal demand in writing to George W. Chapin for a statement of the affairs of the Atlantic De Laine Co. you had, to your recollection, any personal interview and conversation with said Chapin upon the subject.

234 If so, state when, where, and what was said. State whether, to your recollection, you had any such conversation in the presence of William H. Parkhurst, and whether said Chapin, to your recollection, declined to furnish such statements. State fully, to your recollection, all that took place between you and said Chapin upon the subject of said statement.

Ans. I think I did have several personal interviews with Mr. Chapin about the time of making the demand in writing, but cannot give the substance of our conversations. I cannot say where I had the conversations with him, but suppose that it was sometimes at his office and sometimes at my own. I do not recollect of any conversation in the presence of Parkhurst. I don't recollect Mr. Chapin's declining to furnish me such statements.

24th ques. State whether, after said statement was furnished to you, the same was ever sent for by said Chapin, to your knowledge; whether, to your knowledge, he, Chapin, ever stated or sent word that he desired to correct any errors in said statement. State when, and for what reason, the said statement was delivered to said Chapin, if at all, and particularly state whether it was before or after the settlement with you.

Ans. I do not recollect that Mr. Chapin ever sent any one to me for that statement, or that he sent word that he desired to correct any error

therein. After the settlement was made I voluntarily offered to give up the statement, and did so. I did not consider that I ought to hold the statement exposing the condition and standing of the company, which I then considered somewhat embarrassed, and therefore gave it up to him.

25th ques. Please read the statement hereto annexed, marked "B," and state whether you had such conversations with William H. Parkhurst as are therein narrated. If the statements therein alleged to have been made by you are incorrect in any particulars, state fully in what particulars.

Ans. I have no recollection of ever having had any such conversation.

26th ques. State any other matter or thing within your knowledge material to the defendants in this case.

Ans. I recollect of nothing now that I have not answered.

Examination adjourned to March 24th, at 10 a. m. March 24th, 10 a. m., adjourned to meet at clerk's office March 25th, 1865, at 10 a. m. Adjourned to March 27th, 1865, at 10 a. m.

235 Examination of L. B. Frieze continued March 27, 1865.

Cross-examination:

J. H. Parsons, esq., for the complainant, without waiving the objection to the competency of the witness, proceeds to cross-examine as follows, de bene:

1st cross-ques. Did you undertake to verify the statement of the affairs of the Atlantic De Laine Co. exhibited to you by George W. Chapin on the 26th of February, 1853, by a reference to the books of the company either by yourself or any person employed by you?

Ans. I did not, to my recollection.

2d cross-ques. Have you at any time since the releases between yourself and the De Laine Co. were executed ever attempted to verify the truth of said statement?

Ans. I think I have not.

4th cross-ques. Was said statement ever shown to Gen. James by you?

Ans. I do not recollect of ever having shown the statement to him.

5th cross-ques. Look at the letters hereto annexed, marked "C, D, E, and F," the originals of which are in the hands of the examiner, to be marked by him, and state whether they are true copies of the original letters written by you to Charles T. James on the days when they purport to be dated, and whether they were forwarded to him by regular course of mail.

Ans. They are correct copies of the original letters written by me, and were, I presume, forwarded by mail on the days on which they purport to have been dated.

6th cross-ques. Is not letter C the first in which you informed him of the intention of the De Laine Co. to sell out his interest in that company, and does not letter F contain the first notice to him of your settlement with De Laine Co.?

Ans. From the letter marked "C" it appears that I had previously written Gen. James on the subject. He knew of their intention to sell before I wrote this letter, and the negotiations alluded to therein were made with a view to prevent the sale. I cannot say whether the letter marked "F" was the first notice of the proposed settlement which I

gave Gen. James or not. I very seldom made copies of my letters to him.

7th cross-ques. What official position did Gen. James hold at the time the negotiations for this settlement were going on?

Ans. United States Senator from the State of Rhode Island.

8th cross-ques. Please give the exact day of the month of
236 March, 1853, when the settlement, to which you refer in your answer to the 13th direct interrogatory was made.

Ans. I believe it was on the 5th day of March, 1853.

9th cross-ques. Referring to your answer to the 23d direct interrogatory, state whether Mr. Chapin, while "not," as you say, declining to furnish such statements as you desired, did not state he was not prepared to do so until the accounts were settled.

Ans. Referring to my previous evidence in this case, I find that he stated he was not prepared to do so until the accounts were settled.

10th cross-ques. In your answer to the 13th direct interrogatory you state that you knew the condition of the company from their statements. To what statements, other than that of February 26, 1853, do you refer? If to any, state fully.

Ans. I refer to the verbal statements of Mr. Chapin, the treasurer of the company; and I judged of their truthfulness by the general state of business at that time.

11th cross-ques. State, as fully as you can, what those verbal statements were.

Ans. I cannot now recollect them.

12th cross-question. Will you annex to your deposition copies of any and all accounts, statements, and papers in your possession, or under your control, relating to the business between James or you, as his assignee, and the Atlantic De Laine Co.?

Ans. I will annex any papers that I can find in my possession in connection with the business of Charles T. James and myself, as assignee, with the De Laine Co.; but a large portion of all that I had of any importance were given up to Gen. James before the commencement of this suit, and I presume are now in the possession of Mr. T. A. Jenckes I have no other papers under my control other than those which I propose to give up.

13th cross-ques. Will you produce before the examiner any and all books of account in your possession or under your control, kept by you or for you in your business of assignee of James, for examination, and to be produced at the trial of this cause?

Ans. I will produce anything that is in my possession or under my control.

LYMAN B. FRIEZE.

Witness fees: 2 days' attendance, $3.00; 2 miles' travel, 10—$3.10.

237 Sworn to and subscribed before me this 27th day of March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

A.

Annexed to the deposition of Lyman B. Frieze by me March 23, 1865.

JOSEPH S. PITMAN, *Examiner.*

Real estate in Providence	sold under mortgage.
Warwick farm and stock	do. do.
Atlantic De Laine Co. stock	do. do.
Saunders Mill cotton stock	compromised as collateral.
Rockport Steam Mill stock.	
Montauk Manfg. Co. stock	paid to Wm. Mason & Co.
Connestoga Steam Mill stock	do. do.
Harrisburg Steam Mill stock	5,000 do. do. / 20,000 to R. I. Ross, cash.
Reading Steam Mill stock	paid to Wm. Mason & Co.
Cannelton Steam Mill stock	do. do.
American Cannell Co. stock	not received.
East Tennessee Mining Co., disposed of by mortgage to A. De Laine Co.	
Charleston Steam Mill stock	on hand; no fixed value.
Personal property in Mansion House, sold	$8,571
Three shares James' Steam Mill stock	on hand; no fixed value.
100 shares Hill Mining Co., copper	do. do.
100 shares Blackstone Coal Co. stock	do. do.
Allen Brown's note, on hand; no value	$3,600
John Holden's note, do. do.	300
A lot of notes and due-bills, considered worthless, on hand	1,700
Charleston Steam Mill Co.'s account, worthless	1,762
American Cannell Co., settled	15,000
T. Whitford, paid	200
Simeon Babcock, $250, failed, paid	125
Sisson & Jencks, paid F. Greene & Co., on account De Laine machinery, paid	800
Hamilton Smith, considered worthless, disputed account.	
Bank of America stock, sold to pay stock note, same amount	4,000
National Bank stock, sold to pay stock note, (bal. $800, cr. in cash account)	8,400

238 B.

Annexed to the deposition of Lyman B. Frieze by me March 23, 1865.

JOSEPH S. PITMAN, *Examiner.*

In answer to the twenty-fifth interrogatory, he saith: The circumstances were as follows: The De Laine Company had an account against the assignee of some seventy thousand dollars or more, which they were very anxious to have adjusted. They were clamoring for their pay. The assignee was so situated that money to meet his claim and release the stock could not be procured; neither was he able to meet other demands that were due and becoming due; the assigned estate all or nearly all exhausted, except the property held under the mortgage, and that held by the De Laine Company as security for the claim, and for which they had refused to issue the certificate of stock. After a careful survey of the case in all its bearings, Mr. Frieze said to me he had about decided to accept the proposition made him by the De Laine Company. I said I would not do it, but I would fight it out. Mr. Frieze replied, in substance: The De Laine Company have an account as rendered which they will settle as they propose; but to force, show any disposition to kick at it, Chapin says they will try in a claim for damages for non-fulfillment of contract, for defect in the motive-power, machinery, &c., and they will make a claim which will eat up all the

balance which there may be, or that we claim is, due us. We can't get anything from them—neither stock or anything else; and by settling this way I shall get rid of the greatest trouble I have had during this whole business; besides, if we take their statement, the stock is worth no more, if as much, as the debt, and I think that I shall make a good trade if I settle in this way. Mr. Holmes made the same statement, in effect, as Mr. Frieze, stating that no satisfaction would be made by standing out, as they had all the advantage, and they were bound to keep it; that the best thing that could be done was to close it up; and under these views, and with these feelings, the account was finally settled according to the proposition made by the De Laine Company.

In answer to the twenty-eight' interrogatory, he saith: Mr. James was absent from Providence during the time these matters were pending, though we heard from him frequently. He was not here at the time the settlement was made, nor did he give his consent to it. I think the statement was made before he was notified that it was contemplated.

239 I know that he telegraphed, requesting that the matter might be delayed until he could return. He returned a few days after the settlement was made, and I had a conversation with him about it. He said that "if I had been here that settlement would not have taken place with my consent;" that he did not consider himself bound by it, and that if he lived he would rip it up at some future time. He entirely repudiated it, and appeared very decided in his expressions in regard to it.

In answer to the twenty seventh interrogatory, he saith: I did have a conversation with said assignee, or, rather, I had several conversations with him during the time that was pending. I was informed by him, finally, that he had agreed upon a settlement with the De Laine Co. I made the inquiry, "Have you heard from the general yet?" He said, "I have not; I expected to hear, but I have not heard. Chapin is in a hurry to have it closed up, and I have agreed to make a settlement this morning." I made the remark, "The general will not agree to it." He replied, "I can't help that; the thing is done now; and if he don't like it, or don't agree to it, he will have a chance to pitch into them by and by, if he wants to." I think these were his precise words; if not, they were to that effect.

C.

Annexed to the deposition of Lyman B. Frieze by me March 27, 1865.

JOSEPH S. PITMAN, *Examiner.*

PROVIDENCE, *Feb. 4th*, 1853.

DEAR SIR: Chapin this morning received a letter from Hacker, Lea & Co., ordering him to advertise the property at once; and he has therefore backed out of his agreement of yesterday, and says he must advertise to-morrow. I have tried every way to get him to postpone it till I could hear from you; but he will not take the responsibility of so doing. Carpenter has gone to Cuba, and everything, therefore, goes just as says Josiah Chapin and the New York and Philadelphia houses. I told Chapin the property should not be sold if there was any law to prevent it, till they had made a statement of their standing, to show what the mill was doing and the stock was worth. He replied that he could not make a statement till our account was settled. I told that had so much charged to us on their books, and their statement must, of course,

come from those and not our own. At any rate, we must know just how their matter stood, and what they were doing, in order that I
240 might represent the value of the stock correctly, and obtain its true value. He tried very hard to frighten me off by a call for statement of the assignee matters, &c., but I told him he would find me perfectly ready and willing to meet him at the proper time in any shape he might choose to come, and I should expect the same thing of him in relation to the De Laine Mill.

If we wish to put them entirely through, now is the time, for the provocation has come; they have refused to postpone one day.

I have been able to manage them up to this time by apparently coinciding with them in their views, and making it appear that I was much more for their interest than yours. They say they should have had advertised six months ago, as they think they had a right to do, had they not supposed I positively knew about all the arrangements, and assured them from week to week that the negotiation would be closed.

You can see how the matter now stands, and say whether you expect to close the negotiation, or whether I shall go ahead and fight the matter out the best way I can.

I think they intend to sell the Scituate farm first, and will, probably, then take the city estate, and follow with the De Laine Mill stock, if not stopped. The Blackstone Bank have been talking of sueing their claim; but the' will do so or not I cannot say.

I have just learned before closing this that you were to be in New York to-morrow.

I wrote you yesterday, at Washington, about the matter, and that Chapin had agreed to wait till Tuesday next, but his letter this morning made him withdraw from that.

In haste, ys. truly,

L. B. FRIEZE.

D.

Annexed to the deposition of Lyman B. Frieze by me, March 27, 1865.

JOSEPH S. PITMAN, *Examiner.*

DEAR SIR: It is necessary that W. H. Potter and myself should remain here to try and work out the injunction, to use in case everything else should fail.

Did the De Laine Co. give you any rec'pt for the Cannelton notes; and, if so, where is it? Where did you put the De Laine account?
241 I have wanted them very much indeed. N. F. Potter will tell you the whole story, and show you that nothing can be expected of the Chapin's & Co. They are determined to push everything through if the thing can be done.

It is not safe for Potter and myself to leave under the present state of things. Telegraph me to-morrow whether you are coming on. If anything transpires you will hear from me.

Very truly, y'rs,

L. B. FRIEZE.

PROV., *Feb'y* 18, '53.

E.

Annexed to the deposition of Lyman B. Frieze by me, March 27, 1865.

JOSEPH S. PITMAN, *Examiner.*

PROV., *Feb'y* 23,'53.

DEAR SIR: I have time to say but a few words. The money was tendered to Chapin this day, and refused. He is cited to appear before the supreme court to-morrow in the injunction. Potter (N. F.) has also filed a bill to compel them to transfer to him, and we think it can be done to morrow. I will telegraph you result as soon as we get decision. Fisk shew me your letter, and what you said in relation to Lea of Phil. I don't think it will do to trust him too far. It was H. L. & Co. letter (I saw it) that induced Chapin to advertise when he did. Palmer, from Hartford, will be here to-night. I wrote the N. Yk. parties yesterday, and sent an assignee obligation for $15,000, but can't say whether it was what they wanted.

Very truly, y'rs,

L. B. FRIEZE.

F.

Annexed to the deposition of Lyman B. Frieze by me, March 27, 1865.

JOSEPH S. PITMAM, *Examiner.*

PROV., *March 3d*, 1853.

DEAR SIR: We have partially arranged with the De Laine Co., by which they agree to release you from all obligation, and give a full discharge of all claim. They release the Scituate farm to Potter, which makes it right for you. The estate was sold, and the am't of purchase-money obtained of Gen. Carpenter on Mr. Holmes' note, en-
242 dorsed by myself, payable on demand. The Blackstone folk are making arrangements to sell their mortgage. I enclose a slip from Holmes.

I will write you in full to-morrow.

Y'rs, truly,

L. B. FRIEZE.

Deposition of George W. Chapin.

I, GEORGE W. CHAPIN, of the town of North Providence, being duly sworn, on oath depose and say:

1st question by R. W. Greene, esq., for the respondents.

(The counsel for the complainant objects to the taking of this deposition on the ground of the incompetency of the witness, and generally.)

State your age, residence, and occupation.

Ans. Forty-four years; North Providence; merchant.

2d ques. Do you hold any office in the Atlantic De Laine Co.? If so, what, and how long have you held the same?

Ans. I was attorney for the subscribers to the stock, and have held the offices of director and treasurer from the formation of the company.

3d ques. State, if you know, the actual value of the property assigned by Charles T. James to Lyman B. Frieze, by the deed of assignment mentioned in the bill of complaint, and taken possession of by said assignee. State fully your means of knowledge upon this subject.

Ans. I have no personal knowledge upon the subject. My information was derived from Gen. James' assignee, and from him I understood that it was about seventy thousand dollars; that was about the amount that the Atlantic De Laine Co. received the benefit of under the clause in Gen. James' assignment, directing his assignee to complete his con-

tract with the company. The Atlantic De Laine Co. were preferred in the first class of creditors under said assignment, but never received anything. For these reasons I suppose that the representations of the assignee as to the value of the property assigned to him were correct. I do not include in this estimate the interest which Gen. James had in the stock of the Atlantic De Laine Co., upon which the company had a lien, and George W. Chapin, trustee, had a mortgage; nor do I include the other property of Gen. James covered by mortgages to said trustee.

The complainant objects to the above question and answer, because the question calls for a statement of facts which are not and could not have been within the knowledge of the witness, and because the
243 answer contains statements which are irrelevant and immaterial to any question in this cause.)

4th ques. What was the amount and value of the interest of Charles T. James, at the time of his executing the assignments aforesaid, in the property of said Atlantic De Laine Co., and whether he was entitled to any certificates of shares in the capital stock of said company at that time; and if to any, to how many? and if not to any, why not? State fully.

Ans. Gen. James originally subscribed for one hundred and fifty shares of the capital stock, and at the time of his assignment he had, in the performance of his contract, paid, in work and materials, one hundred and thirteen thousand dollars, which would entitle him to one hundred and thirteen shares of the stock; but this was subject to a deduction of about one hundred thousand dollars, being the amount advanced to him by the company, under the contract, over and above the work and materials furnished by him at the time. He was not entitled to any certificate of stock, nor was any other stockholder. The company was not in a condition to issue said certificate, and had not ordered the issue of any. The stock was not all subscribed for. The mill was not completed, and the business of the company was not commenced. The mode of dealing between Gen. James and the company was as follows: When the first instalment fell due under the contract, without any reference to the amount of work and materials then furnished by Gen. James, the company, by me, as attorney before the incorporation, and treasurer after the incorporation, drew upon each subscriber to the stock, Gen. James included, drafts for their proportional amount of said instalment. These drafts were handed to Gen. James, and he gave a receipt for the instalment and the company gave him credit for the amount of the draft drawn upon him as so much paid towards his subscription for stock; and so on, as the different instalments fell due. In this mode of doing business, and in no other way, Gen. James, at the time of his assignment, had paid in one hundred and thirteen thousand dollars towards his subscription for stock. At the same time the company had paid to him on account of his contract two hundred and twenty-one thousand dollars, a sum exceeding the value of the work and materials then performed and furnished by him under it at least one hundred thousand dollars; so that even if his stock, upon which the company had a lien, and I, as trustee of the stockholders, had a mortgage, was at this time reckoned at par, he had a very small, if any, interest in the company.

5th ques. State whether said James, at the time of his exe-
244 cuting the assignment aforesaid, had paid anything towards his subscription to the capital stock of said company. If so, how much and in what manner? State fully and particularly, and give your means of knowledge.

Ans. I have answered this in my answer to the fourth interrogatory. In the manner therein set forth he had credit for one hundred and thirteen thousand dollars as paid in. He never actually paid in any money. I annex a copy of his stock account, marked "A;" also of his contract account, marked "B," and copies of receipts given by him on account of the contract, marked "C."

6th ques. State whether the remainder of said subscribers to the capital stock of said company had paid in any portion of their subscriptions prior to the assignment of said James. If so, what portion and in what manner. State fully and give your means of knowledge.

Ans. Gen. James' assignment was made September 2d, 1851. At that time the other stockholders had paid in on account of their several subscriptions as follows: Hoyt & Tillinghast subscribed for $25,000. They had accepted my drafts on six months for $20,500, $8,500 of which had become due and had been paid by them. They had also paid in, in cash, the sum of $2,500. Hacker, Lea & Co. subscribed for $25,000. They had accepted my drafts on six months for $20,500, $8,500 of which had become due and had been paid by them. They had also paid in, in cash, the sum of $2,500. Hill, Carpenter & Co. subscribed for $30,000. They had accepted my drafts on six months for $16,000, none of which had fallen due. They had paid in, in cash, the sum of ten thousand four hundred dollars. Globe Printing Co. subscribed for $25,000. They had accepted my drafts on four months for $5,000, which had become due and had been paid by them. They had also accepted my drafts on six months for $15,500, $3,500 of which had become due and been paid by them. They had also paid in, in cash, the sum of $1,500. Dodge, Tucker & Co. subscribed for $15,000. They had accepted my drafts on six months for $12,000, $3,500 of which had become due and been paid by them. They had also paid in, in cash, the sum of $1,800. Harrison & Co. subscribed for $10,000. They had accepted my drafts on six months for $9,000, none of which had become due. They had paid in, in cash, the sum of $500. Day, Owen & Co. subscribed for $3,000. They had accepted my draft on six months for $2,000, which had not become due. They had paid in, in cash, the sum of $250. The above is derived from my personal knowledge of the transactions which were entered at the time upon the books of the company.

245 7th ques. State with whom the negotiations, which resulted in the loan of seventy-five thousand dollars and the mortgage to secure the payment of the same, were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

Ans. Up to that date all payments due to Gen. James had been made. On the 1st of July, 1851, Gen. James applied to me, as treasurer, for an advance of $15,000, on account of his contract, which was made. Afterwards he applied for a further advance of $15,000, which was not made. Soon after this I received a letter from Gen. James, of which a copy is annexed, marked "D." Upon receiving this letter I notified the stockholders, and they met at Providence, informally. As prompt action was desired, and as the corporation could only act at a meeting duly called according to the charter after six days' notice, the stockholders, after hearing the statements of Gen. James, and considering the matter, decided to make a loan of seventy-five thousand dollars to him, in the proportion in which they held stock in the company. This loan was made by all the parties except Day, Owen & Co., who had subscribed for only three shares, and were not notified on account of their small interest. Harrison & Co. did not take part in the loan, as

they were financially in trouble. The negotiations were conducted by Messrs. Hoyt, Lea, Carpenter, Josiah Chapin, and myself. The substance of the circumstances consisted in the fact that Gen. James represented that he must have the loan to enable him to go on with his contract, and that a large portion of it should go directly to parties furnishing machinery for the mill, which was then ready for delivery, and detained for want of payment; also, that if the loan was made, the contract should be completed, "let what would happen." The terms and conditions of this loan were in writing, a copy of which is annexed, marked "E." As said before, the company had advanced James over $100,000 more than the buildings and machinery therein were supposed by them to be worth. If James failed, as he would have done unless assisted, the company would have been obliged to have furnished the rest of the machinery themselves.

8th ques. State whether or not the said mortgage was made, and the provisions in said assignment, requiring the assignee to complete the contract with the Atlantic De Laine Co., were insisted upon, upon any understanding or assurance on your part. If so, upon what understanding and assurance, and on whose behalf? State fully and particularly your knowledge upon this subject, and give your means of knowledge.

246 Ans. The loan was made under the circumstances and upon the terms and conditions set forth in my answer to the seventh interrogatory. There was no understanding or assurance of any kind, except that Gen. James expressed a wish that in case we should be obliged to resort to our securities, all the others should be exhausted before resorting to his stock in the Atlantic De Laine Co., to which I assented. The provision in the assignment was inserted by Gen. James, and was in accordance with the representation made by him at the time of said loan, that in case of his failure, such a provision should be inserted in his assignment, and upon no other understanding whatever. There was never any understanding, assurance, or agreement that the stock of Gen. James should not be foreclosed to his injury, or of his estate, or any assurance on my part, in any capacity, that said stock should be retained and held by me until the same could be disposed of for its full value. In different conversations and in correspondence with Gen. James, after his assignment and before the settlement with his assignee, in relation to a settlement, and in relation to selling the property under the mortgages, although Gen. James, at different times urged a postponement of such sale, he never alluded to, or pretended that there was any such understanding or agreement as is alleged in his bill.

9th ques. State whether the said mill was completed and the said machinery furnished according to the contract with said James, mentioned in the bill of complaint. If they were not, state fully and particularly why not. Give your knowledge and your means of knowledge upon the subject.

Ans. By the terms of the contract of Gen. James, the mill and the machinery were to be ready for the overseers and operatives on the 1st day of August, 1851. On this day the building was about completed; the engine was in progress, but not more than half done. Some of the shafting was up. Scarcely any machinery had been put into the mill. I don't think more than $30,000 worth. But little more machinery was received until towards the middle of October, during which month the bulk of it came. But it was not till after the 20th of January, 1852,

Ans. I have answered this in my answer to the fourth interrogatory. In the manner therein set forth he had credit for one hundred and thirteen thousand dollars as paid in. He never actually paid in any money. I annex a copy of his stock account, marked "A;" also of his contract account, marked "B," and copies of receipts given by him on account of the contract, marked "C."

6th ques. State whether the remainder of said subscribers to the capital stock of said company had paid in any portion of their subscriptions prior to the assignment of said James. If so, what portion and in what manner. State fully and give your means of knowledge.

Ans. Gen. James' assignment was made September 2d, 1851. At that time the other stockholders had paid in on account of their several subscriptions as follows: Hoyt & Tillinghast subscribed for $25,000. They had accepted my drafts on six months for $20,500, $8,500 of which had become due and had been paid by them. They had also paid in, in cash, the sum of $2,500. Hacker, Lea & Co. subscribed for $25,000. They had accepted my drafts on six months for $20,500, $8,500 of which had become due and had been paid by them. They had also paid in, in cash, the sum of $2,500. Hill, Carpenter & Co. subscribed for $30,000. They had accepted my drafts on six months for $16,000, none of which had fallen due. They had paid in, in cash, the sum of ten thousand four hundred dollars. Globe Printing Co. subscribed for $25,000. They had accepted my drafts on four months for $5,000, which had become due and had been paid by them. They had also accepted my drafts on six months for $15,500, $3,500 of which had become due and been paid by them. They had also paid in, in cash, the sum of $1,500. Dodge, Tucker & Co. subscribed for $15,000. They had accepted my drafts on six months for $12,000, $3,500 of which had become due and been paid by them. They had also paid in, in cash, the sum of $1,800. Harrison & Co. subscribed for $10,000. They had accepted my drafts on six months for $9,000, none of which had become due. They had paid in, in cash, the sum of $500. Day, Owen & Co. subscribed for $3,000. They had accepted my draft on six months for $2,000, which had not become due. They had paid in, in cash, the sum of $250. The above is derived from my personal knowledge of the transactions which were entered at the time upon the books of the company.

245 7th ques. State with whom the negotiations, which resulted in the loan of seventy-five thousand dollars and the mortgage to secure the payment of the same, were conducted. State fully all the circumstances preceding and relating to said loan and mortgage, so far as they are within your knowledge.

Ans. Up to that date all payments due to Gen. James had been made. On the 1st of July, 1851, Gen. James applied to me, as treasurer, for an advance of $15,000, on account of his contract, which was made. Afterwards he applied for a further advance of $15,000, which was not made. Soon after this I received a letter from Gen. James, of which a copy is annexed, marked "D." Upon receiving this letter I notified the stockholders, and they met at Providence, informally. As prompt action was desired, and as the corporation could only act at a meeting duly called according to the charter after six days' notice, the stockholders, after hearing the statements of Gen. James, and considering the matter, decided to make a loan of seventy-five thousand dollars to him, in the proportion in which they held stock in the company. This loan was made by all the parties except Day, Owen & Co., who had subscribed for only three shares, and were not notified on account of their small interest. Harrison & Co. did not take part in the loan, as

they were financially in trouble. The negotiations were conducted by Messrs. Hoyt, Lea, Carpenter, Josiah Chapin, and myself. The substance of the circumstances consisted in the fact that Gen. James represented that he must have the loan to enable him to go on with his contract, and that a large portion of it should go directly to parties furnishing machinery for the mill, which was then ready for delivery, and detained for want of payment; also, that if the loan was made, the contract should be completed, "let what would happen." The terms and conditions of this loan were in writing, a copy of which is annexed, marked "E." As said before, the company had advanced James over $100,000 more than the buildings and machinery therein were supposed by them to be worth. If James failed, as he would have done unless assisted, the company would have been obliged to have furnished the rest of the machinery themselves.

8th ques. State whether or not the said mortgage was made, and the provisions in said assignment, requiring the assignee to complete the contract with the Atlantic De Laine Co., were insisted upon, upon any understanding or assurance on your part. If so, upon what understanding and assurance, and on whose behalf? State fully and particularly your knowledge upon this subject, and give your means of knowledge.

246 Ans. The loan was made under the circumstances and upon the terms and conditions set forth in my answer to the seventh interrogatory. There was no understanding or assurance of any kind, except that Gen. James expressed a wish that in case we should be obliged to resort to our securities, all the others should be exhausted before resorting to his stock in the Atlantic De Laine Co., to which I assented. The provision in the assignment was inserted by Gen. James, and was in accordance with the representation made by him at the time of said loan, that in case of his failure, such a provision should be inserted in his assignment, and upon no other understanding whatever. There was never any understanding, assurance, or agreement that the stock of Gen. James should not be foreclosed to his injury, or of his estate, or any assurance on my part, in any capacity, that said stock should be retained and held by me until the same could be disposed of for its full value. In different conversations and in correspondence with Gen. James, after his assignment and before the settlement with his assignee, in relation to a settlement, and in relation to selling the property under the mortgages, although Gen. James, at different times urged a postponement of such sale, he never alluded to, or pretended that there was any such understanding or agreement as is alleged in his bill.

9th ques. State whether the said mill was completed and the said machinery furnished according to the contract with said James, mentioned in the bill of complaint. If they were not, state fully and particularly why not. Give your knowledge and your means of knowledge upon the subject.

Ans. By the terms of the contract of Gen. James, the mill and the machinery were to be ready for the overseers and operatives on the 1st day of August, 1851. On this day the building was about completed; the engine was in progress, but not more than half done. Some of the shafting was up. Scarcely any machinery had been put into the mill. I don't think more than $30,000 worth. But little more machinery was received until towards the middle of October, during which month the bulk of it came. But it was not till after the 20th of January, 1852,

that the last of it was delivered. My means of information are my own observations.

10th ques. State whether or not the said Atlantic De Laine Co., through you, as their treasurer, made any claims upon the said James and upon the said Frieze, his assignee, for anything connected with, or on account of, said contract. If you answer that they did, state fully and particularly the nature and extent of such claims. State how and to whom the same were made, and what was said and done in relation to the same.

247 Ans. I have no distinct recollection of any conversation with Gen. James upon the subject of damages, though I have no doubt the subject was frequently mentioned to him. This claim was based mainly upon loss on the purchases of wool, made upon the faith of the contract, and in anticipation of a large and profitable fall business. So positive was Gen. James early in June that the mill would be ready for operation on the day named in the contract, August 1st, 1851, that (and he strongly advised it) a large quantity of wool was purchased for the use of the mill, that month, at the West. Owing to the delay in starting the mill, much of said wool was obliged to be sold at prices considerably below cost. The year 1851, and particularly the autumn, was one of the most profitable seasons ever known by de laine manufacturers, all of which was lost to us by our inability to produce de laines. In 1852, and for several years after, the business was very unprofitable, there being a large excess of production over the consumptive demand. An extra price was allowed Gen. James for his contract, in consideration for the mill being ready for operation at the time named. The loss was a heavy one, and was frequently spoken of by Mr. Carpenter and other members of the company. Early in the fall of 1851, and before the time when the company agreed to make a loan to Frieze, the assignee, to enable him to go on with his contract, he, Frieze, knew of this claim, and it was frequently spoken of in my conversations with him. When I furnished him with a statement of the affairs of the company, I put this down as one of the items.

11th ques. State whether the claims aforesaid were, at the time when so made by you, believed to be just and legal claims against said James and his estate; and state whether the same were made, to your knowledge, with any design to hinder or prevent a settlement between the said company and the said James.

Ans. Said claims were by me believed to be legal and just, and were not made with any design to hinder or prevent a settlement between the company and James, or his assignee.

12th ques. State whether the said claims did, to your knowledge, in fact, hinder or prevent any settlement between the said company and said James.

Ans. I have no knowledge that said claims did hinder or prevent any settlement, and neither James nor Frieze ever intimated to me or to the company that they did hinder a settlement. These claims were compromised and released in the settlement.

13th question. State all the facts in your knowledge and recol-
248 lection relating to any attempted settlement between said company and said James, prior to the settlement which was made, if any such was made. Give all the details, and especially all that was said and done by said James or his assignee, and by yourself, as treasurer of said company, in relation to such attempted settlement, if any.

Ans. On the 10th of April, 1852, Gen. James made a proposition of settlement, a copy of which is annexed, marked "F." This proposition

was submitted to the different members of the company, and after considerable correspondence and consultation, and meeting and listening to the statements of Gen. James, and to various proposed modifications of the propositions submitted by him, it was rejected. At the time these propositions were made, all parties were fully confident that the trustee had ample property in his hands to pay all his claims, and said propositions were declined because they required a discharge of mortgages and liens for no consideration but his own notes on time, which were considered worthless. A reference of all matters in dispute between the parties was once proposed, I think, by Gen. James. The agreement was drawn up by and in the handwriting of Mr. Frieze, and duly signed, but nothing was ever done under it. I have an impression that the referees declined to serve. I annex a copy of said agreement, marked "G."

14th ques. State whether or not, to your knowledge, the said Atlantic De Laine Co. ever neglected and refused to render any statement of their accounts with the said James, or with his assignee, the said Frieze.

Ans. The statements of the accounts of the company with James for building the mill, and with Frieze for advances made him, or any other accounts with either of them, were never refused at any time.

15th question. State whether or not the said James or his said assignee ever requested to be furnished with such accounts, to your knowledge or recollection.

Ans. James never requested any such accounts. Mr. Frieze did, and they were furnished him.

16th ques. State whether or not the said James and his said assignee had at all times full means of knowing the state of such accounts.

Ans. They had free access to the books at all times, and could at any time know the state of their accounts.

17th ques. State whether or not the said James or his assignee ever, to your knowledge, complained that they had not or could not obtain a knowledge of the state of such accounts.

Ans. They never, to my knowledge, complained that they either had not or could not obtain a knowledge of their accounts.

249 18th ques. State if you know anything in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James', interest in the property of the said Atlantic De Laine Co. State all that you know in relation to that subject, if anything.

Ans. I know nothing in relation to any such offer, and never heard that any such was made until this suit was commenced.

19th ques. State whether or not the said James ever called upon you in company with such persons, or with any person or persons, and requested a statement of the account of said company with the said James and with his estate. If so, state when, with whom, and what, if anything, was said and done; and especially state whether then or at any time such statement was refused by you. State fully and particularly your recollection upon this subject.

Ans. He never called upon me with any person or persons and requested a statement of the affairs of the company or of their accounts, or accounts of the company with him or his estate, nor did he alone ever ask for such accounts, or express any curiosity to know the condition of said accounts. No such statement was ever refused him by me, or by any one, to my knowledge.

20th ques. State under what circumstances you advertised said mort-

gaged property for sale, as is alleged in said bill. State whether or not the same was made in violation of any understanding, agreement, or assurance, and especially state whether, to your knowledge, at the time any claim or pretence was made that such advertisement was in violation of any such understanding, agreement, or assurance. State fully and particularly all that passed between yourself and the said James or his assignee in relation to such advertisement.

Ans. On the 14th of September, 1852, I notified Mr. Frieze that unless an arrangement was made by which the parties for whom I acted should receive their money, I should proceed to sell under the mortgages. I had some interviews with Mr. Frieze and Gen. James. Gen. James strongly opposed the same, urging a good many reasons why it should not be made, and stated that if it was attempted he should get an injunction. After a consultation with the parties interested, I delayed the advertisement of the property for sale until the February following. When it was advertised an injunction was prayed for, as stated in said bill. The advertisement was made in accordance with the power contained in the mortgages, and was not in violation of any assurance, understanding, or agreement whatever. Nor did Gen. James, or his assignee, at the time of the advertisement, or at any other time, pretend that the sale was in violation of any understanding, assurance, or agreement. Nor did I ever hear from any source of any such assurance, understanding, or agreement, until after the filing of the bill. Some days after I had advertised the property for sale, Mr. N. F. Potter called on me, and after some conversation, tendered me a sum of money, and requested me to transfer to him the mortgages I held. I offered to receive the money and cancel the mortgages, but by advice of counsel declined to transfer them to him.

21st ques. State whether or not you ever rendered any statement to said Lyman B. Frieze, assignee of said James, which you represented or pretended was a proper statement of the accounts of the said Atlantic De Laine Co. with the said James, and of the affairs of said Atlantic De Laine Co. If so, and the same were in writing, please produce and annex the same, or a copy thereof. When was the same rendered, where and to whom, and at whose request, and under what representations? State whether the same were preceded by any verbal communications by you to the said Frieze or the said James. If so, state when and where the same were made, and give the substance of the same to the best of your recollection.

Ans. On the 15th of February, 1853, I received from Mr. Frieze, assignee of Gen. James, a letter, of which a copy is annexed, marked "H." I afterwards saw Mr. Frieze at my office, and gave him verbally a statement of the condition of the company—of its liabilities and assets—with which verbal statement I understood him to express himself satisfied. I supposed that nothing more was necessary. When an injunction was granted upon the allegation of said Frieze that he had been unable to obtain the accounts which he desired, I rendered him a statement showing the condition of the company January 1, 1853, a copy of which is annexed, marked "I." This statement was taken to Mr. Frieze by my clerk, George W. Munroe, in a sealed envelope, with a letter to Mr. Frieze, a copy of which is annexed, marked "J." I did not render any statement of the account of the company with Gen. James, as none was requested, they having been furnished some time previously.

22d ques. State whether the said statements were ever withheld by you from said Frieze or said James when requested, or, to your knowledge, desired. State whether the same, when rendered, were incorrect

and untrue. Please explain fully and particularly all the circumstances under which said accounts were rendered.

251 Ans. Such statements were never withheld by me from either Frieze or James, when requested or desired. When rendered, they were both correct and true. I have explained the circumstances in answer to interrogatory 21.

23d ques. State all the circumstances under which the mutual releases between said Atlantic De Laine Co. and the said Frieze, mentioned in said bill, were made. State who first suggested the same, and when and where. State what was done in pursuance of such suggestions, and state fully and particularly all that was said and done in relation to the same by yourself or the said Frieze.

Ans. Some days after I had furnished to Mr. Frieze the statements referred to in my answer to the 21st interrogatory, Mr. George B. Holmes called at my office, to wit, on the 28th of February, 1853, and my impression is he said he came as a friend of Frieze and James. He inquired if an adjustment of the matters in dispute between us and Gen. James and his assignee might not be made without further litigation. This was the commencement of negotiations for a settlement. After communicating this proposition to the stockholders, these negotiations were continued for several days, and resulted in mutual releases between the parties. I cannot tell who first proposed this mode of settlement, but my impression is that the proposition was made by the parties representing Gen. James. Mr. Hoyt was in Providence, and took part in the negotiations. The papers between the company and trustee, and the assignee of James, were signed March 5, 1853, and placed in the hands of Mr. George B. Holmes until the individual releases of the stockholders were obtained. These did not come to hand until after the 10th of March, after which the papers above mentioned were exchanged. The company made the settlement agreed upon with great reluctance, feeling that they were receiving scarcely any value for the large amount of money loaned. Nothing but the fact that there was no possibility of obtaining anything more from James or the assignee led them to make it. When the $75,000 loan was made to James, the parties supposed they received securities to the value of at least $100,000, independent of his interest in the De Laine Co.; and as late as June, 1852, at which time some negotiations took place between them and James, said parties were confident that the trustee had sufficient property in his hands to pay off the loan, without foreclosing the mortgage on James' interest in the company. At that time, June, 1852, none of the property had been sold but the stock on the Warwick farm, realizing about $1,300.

The mortgage on the homestead was valued at $20,000, but real-

252 ized only $9,800.50. The mortgage on the Warwick farm was valued at $10,000. It only realized $5,786.79. The mortgage on the Scituate farm was valued at $3,000. Nothing was realized from it. The $50,000 Cannelton notes were valued at par. We obtained only $21,000 for them. These notes were secured by a mortgage on the Cannelton Mill in Indiana, which James had built for the Cannelton Co. He received in part payment therefor their acceptances of his drafts. These mortgage notes were put into his hands by the company for negotiation, the proceeds to be applied to the payment of said acceptances of his drafts. In violation of this trust he pledged said $50,000 of notes to me, as trustee, in part security for the $75,000 loan. His drafts on the Cannelton Co., which he had negotiated with various parties, went to protest, the company having failed. The different holders of these drafts claimed of me said mortgage notes as their property, on account of the

agreement made by James with the Cannelton Co. To avoid litigation I was obliged to compromise with them for $21,000. The 1,000 shares East Tennessee Mining and Manufacturing Co., valued by James at $25,000, we never received anything for. I annex copies of papers executed at the time of settlement. They are the papers marked "K, L, M, and N."

24th ques. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge or assent of said James. State fully all that you know upon this subject.

Ans. I did not know whether said James was aware of said settlement or not. Afterwards I understood from Mr. Frieze that he, James, approved of it. I did not consider it of any importance whether he approved of it or not, as he, Frieze, had full power to settle with us.

25th ques. State whether or not said statements of the affairs of said De Laine Co. were made with the intent to deceive and defraud the said Frieze; and state fully for what purpose the same were made.

Ans. The statement of the affairs of the company were not made with any intention to deceive or defraud the said Frieze. I was always ready and willing to give him any information that he desired about the affairs of the company. He may have called, although I have no recollection that he did so, when a written statement could not be furnished immediately, on account of the books not being made up. When he called for information, I gave him, as before stated, verbally, all the information that I supposed he wanted. When the injunction was granted, I sent him a statement, in writing, in substance and form the same as I was accustomed to send annually to the directors. He made no complaint, and called for no further account. He could have had any explanation that he desired at any time.

26th ques. State whether the attempt to foreclose the said mortgage upon said stock by a sale thereof, or any of the acts of the said Atlantic De Laine Co., or of yourself, or any of the officers of said company, in relation to said stock, or the sale thereof, was, to your knowledge, with the intent on your part, or on the part of the said defendant corporation, or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reason for such attempt, so far as they are known to you.

Ans. Neither the attempt to foreclose the mortgage, or any act of the company, or myself, or of any of the officers or members of the company, in relation to said mortgage and said stock, were with any intent to prevent any one from bidding at said sale, or with the object of obtaining the stock below its fair value. On the contrary, it was the desire of all that some one outside the company would purchase, as we were greatly in need of the funds, and proposed to make the sale to realize the amount due us, as far as the property would go.

27th ques. State whether or not the said James, since the date of said assignment, has been released and discharged from all debts and liabilities then outstanding. State fully your knowledge upon this subject.

(The counsel for the complainant objects to this question for the same reason that he objected to the third direct interrogatory.)

Ans. I have no personal knowledge, but I am informed that certain claims have not been paid. The Atlantic De Laine Co. hold a judgment against him for over $5,000, with interest and cost thereon.

28th ques. State fully, to your knowledge, all the facts in relation to

a judgment recovered by yourself against said James, mentioned in said bill.

Ans. The note was originally made by Gen. James, payable to the order of L. B. Frieze, for $5,000, and its payment was guaranteed by the Globe Printing Co. and by Hill, Carpenter & Co. The purpose of making the note was to enable Gen. James to raise money to pay for labor at the De Laine Mill. It was preferred in the assignment of Gen. James, but it was never paid by him or his assignee. It was paid by the guarantors, and was held by them, and was theirs at the time
254 of the settlement of the Atlantic De Laine Co. with Gen. James and his assignee. After that settlement the Atlantic De Laine Co. purchased said note of the guarantors, paying the full amount due thereon. They directed me to obtain *payment* thereon. I did so, and transferred the judgment to the company, and the judgment is now unsatisfied.

29th ques. State, if you know, where the statement of the affairs of the said company, which you rendered to said assignee, now is. State whether you made any effort to obtain the same. If so, when, from whom, and for what purpose. State fully and particularly your knowledge upon this subject.

Ans. I did not make any application for it until after the settlement with Frieze, when I told him said statement was useless to him, and as the company's affairs were in a very unflattering condition, I would prefer he would return it to me, that the public might not know how badly off we were. He gave it to me, and I suppose I destroyed it, as I cannot find it.

30th ques. State the place where, and by whom, the books of account of the said company were kept, naming the particular books kept at each place, and the person by whom the same were kept.

Ans. The books naturally belonging to the mill, such as time and labor books, books for keeping account of all articles received at the mill and all articles used therein, invoice-books, containing memoranda of all shipments of goods from the mill, and books for keeping account of the cost of goods manufactured, and also of the rent-roll, were kept at the office of the mill. George F. Wilson was the book-keeper. The accounts kept on these books were rendered to me every six months, and on my books carried to the proper accounts. All invoices of goods were sent to me as soon as they were shipped, and at once entered on the books at my office. At my office in the city were kept the stock and transfer books, the day-book, journal, and ledger, and cash-books, in which were contained all the transactions of the company. Therein were recorded all purchases and sales of merchandise, all notes given and paid, all drafts drawn and discounted, accounts with the various agents and banks, and accounts of all articles and moneys sent to the mill. At this office only were the books kept which showed the actual condition of the company's business and value of its property. Samuel C. Blodgett was the book-keeper, and George W. Munroe was the assistant. Gen. James was aware from the time of the organization of the company where the above books were kept, and knew that at my office, and there only, could be obtained the amount of the company's assets and liabilities and the general condition of their business.

255 31st ques. State whether any, and, if any, what expenditures were made in and about said mill, after the assignment of Gen. James, under the direction of said Atlantic De Laine Co., or any of its officers and employees. State fully all that you know upon this subject.

Ans. I annex an account of all the items of expenditure made by the direction of the company, and charged to James' contract account. These items were deemed by the company to be properly embraced in James' contract, and chargeable to him. It is the paper marked "O."

32d ques. State what, at the time of the execution of the releases mentioned in said bill, was the nature and amount of the claims of said company, and of yourself, as trustee, upon said James and upon his estate. State also the condition of said company at the same time, and the value of its capital stock. State fully and particularly your knowledge upon the subject.

Ans. At the time of the settlement we had loaned the assignee of James, to aid him in completing the contract, $54,839.86. From this amount was deducted $13,098.98 due James' contract account for interest, &c., leaving a balance due by the assignee to the company of $41,740.88. There was due me, as trustee of the stockholders, $43,092.58. Total amount due to both, $84,833.46. We also had a claim on James' estate for damages for non-fulfillment of his contract, which was put down in the statement furnished Frieze, a copy of which is hereto annexed, marked "I," at $50,000. None of the stockholders estimated the damages below this amount, and some of them much above it. The statement furnished the assignee was a true copy of the books January 1st, 1853. At this time James' bill for building the mill had never been presented to the company, and consequently had not been credited to his contract account. At the time of the settlement it was agreed that the date on which his bill should be credited to his contract account should be February 1st, 1852. There was, consequently, eleven months' interest on $260,000, say $14,300, due said account January 1st, 1853, increasing the liabilities of the company so much. In order to aid the assignee in obtaining the balance of the machinery due from William Mason & Co., of Taunton, the company were obliged to join said Frieze in a bond to furnish certain stocks or their value. I annex a copy thereof, marked "P." Frieze was unable to obtain the stocks, and the company were obliged to pay Mason & Co. $6,550 to be released from said bond. I annex a copy of said release, marked "Q." This bond, therefore, increased the liabilities of the company $6,550. The indebt-
256 edness of the company to various parties was, as will be seen by the statement, $552,046.02, to which must be added the above-mentioned sums of $14,300 and $6,550, making the total liability of the company, January 1, 1853, $572,896.02. They had on hand at that date personal property, such as cash, bills receivable, wool, cotton, stock at mill, de laines, cassimeres, &c., &c., valued at $355,855.21. The de laines, however, were overrated, they not realizing, when sold, as much by $8,000 as estimated. This amount deducted from $355,855.21 leaves $347,855.21 as the value of our personal property at that date, which amount deducted from the amount of our liabilities left $225,040.81 to be realized from the other assets of the company, in order to enable it to pay its existing debts. These assets were only two, viz, the claim on the assignee for the amount loaned him to that date, which was $53,314.77, and the mill property, which had cost $310,006.04. The first item was undoubtedly valueless, as he, Frieze, had not a dollar belonging to the estate, and from that time to this has not realized enough therefrom to pay for his own services. The mill property was not worth what it had cost. The market was overstocked with de laines, raw material was high, our goods were bringing no more, if as much, as they cost to make, and there was but little probability of a change. The idea of abandoning, in whole or in part, the manufacture of de laines was agi-

tated both before and after the settlement. Soon after the settlement it was resolved to sell what machinery was only adapted to making de laines, and replace the same by such as would enable us to manufacture cotton cloths with all our machinery. That not adapted for making cotton goods was sold for $20,000 less than cost; to replace which with cotton machinery we had to pay $42,000. The steam-engine put in by James had proved so nearly a total failure that, after expending nearly $5,000 to put it in order, and stopping the mill often (at one time five consecutive weeks) to repair it, it was decided before the settlement to replace it with a new one. This was done shortly after the settlement, costing us $10,000, after deducting what was received from the sale of the old engine. Allowing the mill to have been worth its cost, and to be sold for the $310,000, it would leave $85,000 to be divided among the stockholders, who held 237 shares, giving the value of each share $355.65, and for the 113 shares standing in James' name $40,527.45, a sum in sufficient to pay the trustee's claim alone. The above statement refers to January 1, 1853, when the accounts of the company, as was the uniform custom, were made up, and their books balanced. At the time of the settlement, the affairs of the company were substantially the same,
257 excepting as hereinbefore stated. So depressed was manufacturing at that time, and so large an expenditure was imperative to put it in order to produce cotton goods, (some $75,000,) it would not have sold for over, if for, $250,000, rendering the stock almost valueless. The condition of the company was a critical one. They were carrying a very heavy accommodation debt, owing to the smallness of their capital, on which the amount of interest was very large. They had no credit but what was derived from the responsibility of the stockholders, who were individually liable for all the debts. The business of the company was unprofitable, and but little prospect of its being remunerative for a long time. The value of the capital stock was nominal.

33d ques. Annex to your deposition a copy of the charter of said Atlantic De Laine Co., and state whether or not the said company have complied with the provisions of the law of Rhode Island in order to exempt the individual corporators from personal liability for the debts of the corporation, and state whether the individual corporators were so liable.

Answer. I annex a copy of the charter, marked "R." They had not complied with the provisions of the said law, and consequently the stockholders were individually liable for all the debts of the company.

34th ques. State whether any additional machinery not required by the contract was put into the mill by Gen. James or his assignee.

Ans. No machinery not required by the contract was put into the mill by James. As I have hereinbefore said, scarcely any machinery had been put into the mill up to the time of James' assignment. Nor did Frieze, his assignee, subsequently put in any not required by the contract. He was exceedingly particular on this point. He found, on assuming the assigneeship, that there were no funds or property on which he could realize to use in completing the mill, excepting certain manufacturing stocks, most of which were already under attachment by William Mason & Co. These manufacturing stocks he transferred to said Mason & Co., in consideration of which they delivered to him the machinery which they had made for the mill under a contract with James. In order to go on and complete James' contract with us, he was obliged to apply to us to advance him money to pay for needful machinery and articles required to complete said contract. This we consented to do, and he made an agreement with us to re-imburse us out of the first

monies realized from the assigned estate. I annex a copy of said agreement, marked "S." He, in said agreement, requested us to pay
258 whatever was due, or might become due, to parties who had since the assignment, or might after the date of said agreement, furnish machinery and other articles for the completion of the mill. In order to prevent us from paying and charging to his account any bills which he might consider outside of the contract, he expressly stipulated that his written assent should be first obtained to every bill before charging it to his account, all which was done. At times he would have some doubts about bills presented, in which case he referred them to Mr. A. R. Fiske, who was a party to the contract with James and personally at the mill superintending the completion of the contract. Unless Mr. Fiske approved of them he would not, in which case the company would pay said bills, charging them to James' contract account, unless convinced that they properly belonged to them to pay, when they would be charged to the construction account of the mill.

35th ques. State how the large store-house, dye-house, repair-shop, and blacksmith's shop were paid for. Explain fully.

Ans. The "large store-house" is a wooden framed building, with the sides and roof covered with slate. It was begun while James was building the mill. The same parties who furnished the stone for the mill foundation furnished that for the store-house and charged it to James. He paid for the labor of laying said stone, also a part of the carpenters' work, and furnished some other materials, all of which was credited to him on his contract account, December 31, 1851, the amount being $1,323.22, as will be seen by referring to the paper marked "B." The Atlantic De Laine Co. paid for almost all of the lumber, for all the slating and fixtures, directly to the parties furnishing them, and also for considerable of the labor. The dye-house belonged to the cassimere department. Being attached to the mill, it was agreed between James and myself that the building of it should go on at the same time as the mill, and we would pay him for it. What was done by him amounted to $580.05, and is duly credited to him on his contract account, December 31st, 1851, as will be seen by referring to paper marked "B." No repair-shop was built; the room used as such being in the building styled in the contract "a store and counting-house, 80 ft. by 40 ft., two stories high." The blacksmith-shop was not erected until after James' assignment, and was entirely built and paid for by the Atlantic De Laine Co.

36th ques. State any other matter or thing material to this case within your knowledge.

Ans. As some question was made by counsel in the argument of the case about the trustee's account, I annex a copy of the same. It is the paper hereto annexed, marked "T."

The complainant, by his counsel, J. H. Parsons, esq., objected
259 to each of the foregoing questions before the same were put to the witness, and the objection was not noted after each question, but the noting thereof was reserved to be made at the close of the direct examination, to save time. The objections were made to said questions, and also to the answers thereto, because the witness is a defendant in said suit, is not a nominal party thereto, and is interested in whatever decision may be rendered therein, and the original complainant and party to the cause of action is dead, and his administratrix has become the party complainant.

The complainant's counsel also desires the examiner to note that the witness has read his answers to the above questions (excepting the first)

from a written paper; and while not objecting to the method of taking of the deposition by question and answer, adopted by the examiner, complainant does object to the answering by the witness of the questions propounded in the manner aforesaid, as irregular, improper, and contrary to the letter, spirit, and intention of the amendment to the 67th rule in equity adopted by the Supreme Court of the United States.

At this point the examination was adjourned to March 21st, 1865, at 10 o'clock, a. m.

March 21. Adjourned to March 22, at 10 a. m.

March 22. On motion of T. A. Jenckes, esq., the cross-examination of George W. Chapin was adjourned to the 25th inst., at 10 a. m.

March 25th, 1865. Adjourned to March 27th, at 10 o'clock a. m.

March 27th, 1865. Examination resumed.

Cross-examination, by J. H. Parsons, esq., for the complainant:

Without waiving any objection to the competency of said witness, or any of the special objections hereinbefore made, the complainant, de bene, puts the following interrogatories:

1st ques. Are you or not a stockholder in the Atlantic De Laine Co.; and if yea, have you not been a stockholder from the beginning of that company, and what was your interest at said beginning, and how has that interest changed from time to time since? Give your exact interest from time to time.

Ans. I am a stockholder of the Atlantic De Laine Co. I have
260 been a stockholder from the commencement of said company. I was at the beginning half owner of 25 shares. After the settlement with Frieze I acquired a half interest in twelve shares more. In January, 1856, I bought 30 shares. I have since acquired an interest in about 90 other shares.

2d cross-ques. If you refer to any books or papers in answering the direct interrogatories, you will annex copies of all such papers, and of the entries on the books referred to, and produce the originals of said books and papers, to be marked by the examiner, and produce them at the hearing of this cause.

Ans. I will. They are the papers heretofore and hereinafter annexed.

3d cross-ques. Are you one of the defendants in this suit?

Ans. I am.

4th cross-ques. Did you sign the original paper, of **which Exhibi** G, annexed to your direct examination, purports to be a copy, bearing date June 1st, 1852; and if so, were you aware of its contents when you signed it?

Ans. I did; I was.

5th cross-ques. What was done concerning the reference agreed upon in said paper? Did said referees ever meet; if so, when, and how often? Were any accounts, papers, or statements submitted to them by the parties to the agreement? Annex copies of all papers and accounts submitted to them by the Atlantic De Laine Co. What award did said referees make? When was it made? What action was taken thereon by either of the parties to the agreement?

Ans. Nothing was done concerning said reference that I ever knew. I don't know that the referees were ever apprised of their appointments, but have an impression that if they were they declined to serve.

6th cross-ques. Why were said referees never informed, and why was no further action ever taken upon the subject-matter of the reference?

Ans. I suppose they were informed. I don't know why no further

action was taken, any further than I have answered to the 5th cross-question.

8th cross-ques. Did you, or did the De Laine Co., ever make any effort to have the matters agreed to be referred by the paper dated June 1st, 1852, decided by referees?

Ans. Not to my knowledge.

8th cross-ques. Were any of the matters constituting the subject of said agreement ever referred to any one, or decided upon by any one acting as referee?

Ans. Not to my knowledge.

261 9th cross-ques. Will you annex to your deposition an account of the items credited to James' contract-account?

Ans. They appear on page 5 of Exhibit B, annexed to my direct examination.

10th cross-ques. To what account on the books of the Atlantic De Laine Co. were the various items which, in your answer to the 31st direct question, you say were paid by said company, charged?

Ans. They were charged to construction-account.

11th cross-ques. Were any of them charged to James, or any account bearing his name in any way?

Ans. Not to my knowledge.

12th cross-ques. Will you annex to your deposition a copy of the Atlantic De Laine Co.'s construction-account up to the date of the settlement with Frieze?

Ans. I will. It is the paper hereto annexed, marked U.

13th cross-ques. Did you ever furnish Gen. James or Mr. Frieze, or any person acting for them, or either of them, with a statement in detail of the items constituting the "bills payable," the amounts "due agents for advances," the amounts "due various persons on account," the manner in which you arrived at the value of the "capital stock" which made up the debit side of the so-called statement I, annexed to your deposition, or of the "bills receivable," "cost of real estate, cassimere department, and amount paid James' contract account," "due from L. B. Frieze, assignee," "due from sundry persons," "wool, cotton, and supplies at mill," "de laine cassimeres on hand," which, together with the balance, make up the credit side of said so-called statement?

Ans. At this late day I cannot say whether I did or not. If Gen. James or Mr. Frieze ever asked for them they were furnished. Gen. James' contract-account and L. B. Frieze's assignee-account I know were furnished.

14th cross-ques. Did Gen. James, or Frieze, or either of them, or any person acting for them, ever examine the books of said company, or compare the said statement with and verify it by the books?

Ans. They did not.

15th cross-ques. Were they, or either of them, or any one for them, ever permitted, at any time after you made the statement in reply to Frieze's note of February 15th, 1853, to examine said books, to compare and verify the statement furnished by you?

Ans. The books were open for them if they wished to examine them.

262 16th cross-ques. The so-called statement I purports to represent the condition of the Atlantic De Laine Co. up to January 1st, 1853. Was any statement of any kind of the condition, standing, and accounts of said company up to the date of the settlement, or up to any date later than January 1st, 1853, ever furnished by said company to James, Frieze, or any one acting for them or either of them?

Ans. Not to my knowledge.

17th cross-ques. Did you, in any interviews or any conversations with Frieze prior to the time you furnished the statement I, say to him that you were not prepared to furnish the statements he wished until the accounts were settled?

Ans. I may have done so, as the accounts of the company generally require from one to two months after the 1st of January to be made up.

18th cross-ques. Will you annex to your deposition a schedule of the "bills payable" named in paper I, giving the amount, date, time of each, and to whom and where due?

Ans. I will. It is paper hereto annexed, marked "V."

19th cross-ques. Will you annex a schedule of the "amounts due agents for advances," therein named, giving the name of each agent and the amount advanced by each?

Ans. I will. It is the paper hereto annexed, marked "W."

20th cross-ques. Will you annex a schedule of the "amounts due various persons on account," naming each person, the amount due each, and for what said amount was due?

Ans. I will. It is the paper hereto annexed, marked "X."

21st cross-ques. Will you give me the name of each stockholder in the Atlantic De Laine Co. on the 1st of January, 1853, the amount of stock owned by each, the amount, if any, which each had paid for his stock; and will you explain fully the manner in which you came to fix the item of capital stock in statement I at $237,495.53?

Ans. I will. It is the paper hereto annexed, marked "Y."

22d cross-ques. Will you annex to your deposition, in separate schedules, the "cash and bills receivable on hand" named in statement I, giving the amount, date, time, and maker of each bill or note; also a schedule of the separate items of "cost of real estate of the cassimere department, and amount paid James' contract-account," named therein; also a schedule of the items of the amount "due from L. B. Frieze, assignee;" also a schedule of the items of the amount due from sundry persons, naming each person and the amount due from each; also a schedule giving the amount and value of the wool, and the amount
263 and value of the cotton, and of the amount and value of the supplies at the mill, stating everything included in the term supplies? State the separate value of de laines on *on* hand and that of the cassimeres on hand.

Ans. I will. It is the paper hereto annexed, marked "Z," with the exception of the schedule of the items of amounts due from L. B. Frieze, assignee, which is the paper marked "AA."

23d cross-ques. Will you annex to your deposition a full and detailed statement of the exact condition, standing, and accounts of the Atlantic De Laine Co. on the 1st day of March, 1853, giving in detail each item of its assets and each item of its indebtedness or liability?

Ans. I will, as far as I can. It is the paper annexed, marked "BB."

24th cross-ques. Were the de laines and cassimeres, or any portion of them, which in statement I you say were on hand, and the aggregate value of which you therein fix at $149,516.74, subsequently sold; and if so, will you annex a statement of the time when, by whom, and for what amount they, or any part of them, were sold?

Ans. They were subsequently sold. I will annex such statement if in my power. The times and amounts for which they were sold appear on Exhibit Z, page 5.

25th cross-ques. Were the "wool and cotton at mill," named in statement I, sold or manufactured into goods after January 1st, 1853?

Ans. They were either made into goods or sold.

26th cross-ques. Were they, or the goods into which they were manufactured, sold at a profit?

Ans. That is a question I cannot answer here.

27th cross-ques. Will you annex a statement of the amount for which that portion of said cotton and wool which was sold, was sold; and the amount for which the goods into which the remainder was manufactured was sold, giving the cost of manufacture, if you can?

Ans. I will if I can. I annex such a statement. It is the paper marked "CC."

28th cross-ques. Will you, if you can, furnish a statement of the amount of profits referred to in the twenty-seventh cross-interrogatory?

Ans. I will if I can. It is contained in paper hereto annexed, marked "CC."

29th cross-ques. Was the business of the Atlantic De Laine Co. a profitable one from January 1st, 1853, to January 1st, 1859, and
264 will you annex to your deposition a statement of the profit or loss made by said company in each of the years 1853, 1854, 1855, 1856, 1857, 1858?

Ans. I cannot answer the first part without looking at the books. I will annex such a statement. It is the paper hereto annexed, marked "DD."

30th cross-ques. What were the bills receivable, making up the sum of $50,000 in Exhibit T, purporting to be your trustee account? Will you annex a schedule giving the amount, date, time of making of each; and will you also state in said schedule how the item "balance of interest, $5,319.44," was arrived at?

Ans. I will annex a schedule with all the items asked for. It is the paper hereto annexed, marked "EE."

31st cross-ques. When, in response to Mr. Frieze's letter of February 15th, 1853, you gave him the statement of which Exhibit I purports to be a copy, did you then, or did you at any subsequent time, furnish him with any of the details of the items constituting that statement, or with any detailed statement or statement similar to those which you have produced in answer to the several cross-interrogatories?

Ans. I furnished him with all the details of the various accounts which he wished.

32d cross-ques. Can you state which of the statements, if any, which you have furnished in response to any cross-interrogatory, you gave him as exhibiting the details of any of the items of Exhibit I?

Ans. He must have had his account as assignee. Whether he had any others I cannot say now.

33d cross-ques. Did James, or any one for him, ever have any detailed statement of the condition and affairs of the company?

Ans. Frieze had statement I. Neither James, or any one for him, ever asked for any statement.

34th cross-ques. Did you ever furnish to Frieze, James, or any one acting for them, or either of them, prior to the settlement with Frieze, any statement of the condition of the company up to any later date than January 1st, 1853?

Ans. No. None was ever asked for.

35th cross-ques. Were there any goods on the 1st of January, 1853, or on the 1st of March, 1853, in the hands of agents, belonging to the company?

Ans. There were, and were included in the de laines and cassimeres on hand, in statement I, and in the statement representing de laines and cassimeres on hand on the 1st of March, 1853.

265 On the 1st of April, A. D. 1865, the deponent made the following statements, the exceptions of the complainant's counsel having been now read to him as written at the close of the direct examination:

I would state that I have referred to my original minutes, in my possession, from which my former deposition was given, for the purpose of refreshing my memory in giving this present deposition, which is like the former one, excepting some additions which have occurred to me since that was given. I did not read from my former deposition at all, nor from my minutes, except for the purpose of refreshing my memory.

GEORGE W. CHAPIN.

Sworn to and subscribed before me this 1st day of April, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

A.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Charles T. James' stock account.

1851.		CREDIT.	
Jan.	21.	By G. W. C., atty., draft on him of this date at sight	18,000
Feb.	15.	By G. W. C., atty., draft on him of this date at sight	22,000
March	15.	By G. W. C., atty., draft on him of this date at sight	22,000
April	15.	By G. W. C., atty., draft on him of this date at sight	22,000
May	15.	By G. W. C., atty., draft on him of this date at sight	11,000
June	12.	By our draft on him June 15, at sight	18,000
			$113,000

266 B.

Annexed to the deposition of George W. Chapin by me this 20th March, 1865.

JOSEPH S. PITMAN, *Examiner.*

Charles T. James' contract account with the Atlantic De Laine Co.

1851.		DR.		
Jan.	21.	For amount the following drafts paid him as 1st payment on contract:		
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	5,000	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date	5,000	
		G. W. C., atty., on Globe Printing Co., 4 mos. from date	5,000	
		G. W. C., atty., on Hill, Carpenter & Co., 1 ds. sight	3,000	
		G. W. C., atty., on Chas. T. James, at sight	18,000	
				36,000

Feb.	15.	For amount the following drafts paid him as 2d payment on contract:		
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	3,500	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date	3,500	
		G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date	3,500	
		G. W. C., atty., on Globe Printing Co., 6 mos. from date	3,500	
		G. W. C., atty., on Chas. T. James, at sight	22 000	
				36,000
March	15.	For amount the following drafts paid him as 3d payment on contract:		
		G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date	3,500	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos from date	2,500	
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	3,000	
		G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date	2,500	
		G. W. C., atty., on Globe Printing Co., 6 mos. from date	2,500	
		G. W. C., atty., on Chas. T. James, at sight	22,000	
				36,000
267 April	15,	For amount the following drafts paid him as 4th payment on contract:		
		G. W. C., atty., on Harrison & Co., 6 mos. from date	4,000	
		G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date	2,500	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date	2,000	
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	2,000	
		G. W. C., atty, on Globe Printing Co., 6 mos. from date	2,000	
		G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date	1,500	
		G. W. C., atty., on Chas. T. James, at sight	22,000	
				36,000
May	15.	For amount the following drafts paid him as 5th payment on contract:		
		G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date	6,000	
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	4,000	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date	4,500	
		G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date	2,500	

		G. W. C., atty., on Globe Printing Co., 6 mos. from date	4,500	
		G. W. C., atty., on Harrison & Co., 6 mos. from date	3,500	
		G. W. C., atty., on Chas. T. James, at sight	11,000	
				36,000
		Amount carried forward		180,000
1851.		DR.		
June	12.	Amount brought forward		180,000
		For the following drafts paid him as 6th payment on contract:		
		Our draft on Hoyt & Tillinghast, 6 mos. from 15th inst	3,000	
		Our draft on Harrison & Co., 6 mos. from 15th inst	1,000	
		Our draft on Hacker, Lea & Co., 6 mos. from 15th inst	3,000	
		Our draft on Globe Printing Co., 6 mos. from 15th inst	3,000	
268	June 12.	Our draft on Day, Owen & Co., 6 mos. from 15th inst	2,000	
		Our draft on Hill, Carpenter & Co., 6 mos. from 15th inst	4,000	
		Our draft on Dodge, Tucker & Co., 6 mos. from 15th inst	2,000	
		Our draft on Chas. T. James, dated 15th inst., at sight	18,000	
				36,000
July	2.	For the following notes given him on account of final payment:		
		Our note at 4 mos. from date	5,000	
		" " " 4 " " "	5,000	
		" " " 4 " " "	5,000	
				15,000
Dec.	31,	For building various drains from mill		287 78
		For coal used by engine in driving shafting from Aug. 4 to Sept. 22, '51, 42½ tons, as cash, Aug. 4, '51.	198.90	
		For coal used as above, from Sept. 22, '51, to Nov. 6, '51, 69½ tons, as cash, Jan. 30, '52	318 61	
		For a wrench in Prov. Machine Co.'s bill, approved by A. R. Fisk, paid Dec. 11, 1851	18 00	
		For a lap apron, charged in G. & D. Taylor & Co.'s account, approved by A. R. Fisk, paid Oct. 1, '51	20	
				535 71
		For amount labor paid Wilkinson, Wilbur, and Sargent, and their hands, from July 28 to Aug. 16	127 05	
		For amount labor paid Wilkinson, Wilbur, and Sargent, and their hands, from Aug. 16 to Sept. 13, '51	364 18	

	For amount labor paid Wilbur and Sargent, and their hands, from Sept. 13 to Oct. 11	374 00		
	For amount labor paid Wilkinson, Wilbur, and Sargent, and their hands, from Oct. 11 to Nov. 8	402 08		
	For amount labor paid Wilbur and his hands, from Nov. 8 to Nov. 15, '51	42 71		
269	For amount labor paid Sargent and his hands from Nov. 8 to Nov. 22, '51	112 54		
	For amount labor paid Wilkinson and his hands from Nov. 8 to Dec. 6	114 25		
				1,536 81
1852.				
Jan. 1.	For amount paid Brigham & Pearce, bill 78 wool-baskets			197 00
March 27.	For amount paid Pearce & Luther, bill painting boxes	103 03		
	For amount paid Lemuel Angell, collector, bill for tax assessed Aug. '51, in North Providence, on $75,000, with interest	169 12		
				272 15
	Amount carried forward			$233,829 45

1852. DR.

	Amount brought forward			$233,829 45
April 24.	For paid Burr & Shaw, bill hose and pipes			259 74
29.	For paid Phenix Iron Foundry, bill for waste-gates, shafting, &c			59 48
May 28.	For paid Prov. Gas Co., bill for extra meter and fixings			51 60
29.	For paid Pierce & Luther, 3 bills of painting, of $62.63, $76.07, $117.30			256 00
31.	For paid labor and materials used about engine and mill			720 84
June 10.	Paid Thurston, Greene & Co., bills, various machines for mill			213 67
25.	Paid J. R. Brown, bill one watch-clock	44 00		
	Paid Pope & Cutter, for fitting up do	31 00		
				75 00
30.	For A. Dailey's bill in part	501 02		
	For articles of Brown & Barker, as by bill cash, Aug. 6, '52	173 41		
	For articles of A. Anthony & Co., as by bill cash, June 30, '52	78 00		
270	For articles of N. H. Bradford & Co., as by bill of cash, March 13, '52	95 86		
	For articles of W. Earle, as by bill of cash, June 30 '52	23 91		

	For H. W. Slocum, as by bill of cash, May 25, '52	32 76		
	For articles of James Eames, as by bill of cash	99 81		
	For articles of Rose & Farnum, as by bill of cash, June 30, '52	29 66		
	For articles of G. & D. Taylor & Co., as by bill of cash, Sept. 5, '52	25 00		
	For articles of W. Coleman & Sons, as by bill of cash, June 30, '52	5 60		
	For articles of Calder & Phillips, as by bill of cash, June 30, '52	73 76		
	For ½ amt. paid by us for horse-hire to April 24, cash March 31, '52	149 26		
	For amt. work in smithy, as by acct. rendered	531 08		
	For paid P. Mathewson, stone for engine, cash May 14	114 00		
	For paid A. & W. Sprague, for blanketing, cash June 30, '52	5 00		
	For paid Wm. Hudson, travelling expenses, cash June 30, '52	11 30		
	For paid Lewin & Fisk, labor on partition for dressing-room, Feb. 15, '52	19 50		
	For paid the Mrs. Reynolds & Hargraves, making beam-cloths, May 8	9 17		
	For paid Mrs. Richardson, board of engine-hands, May 8	36 00		
	For paid A. R. Fisk, April 30	75 00		
	For paid Franklin Manfg. Co., J. Waterman & Co., and D. Hunt, bill waste for cleaning machinery, Dec. 1, 51	39 21		
271	For paid Rice & Congdon, speeder-belting, Nov. 18, '51	6 00		
	For sundries of the following persons, approved by A. R. Fisk, January, 1852:			
	A. Anthony & Co., picker-leather, Aug. 12, '51	8 47		
	N. A. Eddy, 47 m. tacks, $3.53; tools and screws, $3.29; screws, files, and locks, $3.51	10 33		
	S. A. Briggs, oil-drippers, Sept. 8, '51, Feb. 23, '52	63	2,153	74
	Amount forward		$237,619	52

1852. DR.

	Amount forward		237,619	52
June 30.	Paid P. Grinnell & Sons, emery and files, Sept., '51	1 93		
	Paid Wm. Earle, cotton duck, Oct. 1, '51	9 00		

		For Prov. Machine Co.'s bill, settled April 6, '52, less item of commission, charged Feb. 24, $111.72, and interest, $2.24=$113.96, whole bill $1,060.23, less $113.96	946 27	
		For C. & H. S. Pierce, bill baskets, Jan. 15, '52	40 00	
		For Thurston, Green & Co., bill tools for engine, June 9, '52	213 67	1,210 87
		For Globe Printing Co.'s bills bagging used in covering steam-boiler		46 80
		Paid for insurance on mill and machinery for $53,000, for 60 days from July 30, '51, cash, Aug. 18, '51	198 50	
		Paid for insurance on mill and machinery for $72,000, from Sept. 30, '51, to Feb. 1, '52, a 1¼ per cent. per annum average, Oct. 25, '51	300 00	498 50
	Oct.	8. Paid N. A. Eddy, bill hardware		57 74
272	Oct.	16. Paid A. H. Manchester's bill force-pump		122 94
	Nov.	22. Paid Amoskeag Manfg. bill sundries		597 92
		30. Paid freight, plank from Boston		3 00
	Dec.	31. Paid D. C. Murdock, bill drop-wire, box, &c	58 00	
		Paid Howard & Davis, bill clock and scales	64 00	122 00
		For sundries in Wm. Mason & Co.'s bill, cash, March 1, '53		802 07
		For Thurston, Greene & Co.'s bill labor and materials on engine		3,614 88
		For paid for labor, lumber, brick, tools, &c		1,967 27
		For sundry items in Prov. S. & G. P. Co.'s bills for articles used in fitting up roller-room		80 29
		For Prov. S. & G. P. Co.'s bill for labor, &c., at mill, from March 22 to May 22, '52		253 04
	1853.			
	Jan.	29. For paid Lewin, Kenyon & Co.'s bill work on engine		382 39
	Feb.	4. For amt. Thurston, Gardner & Co.'s bill boiler, cash		3,243 14
	March	15. For paid Edward Smith for his bill mule regulator		340 00
		29. For paid Calder & Phillips, bill labor, &c		122 82
		21. For, paid P. S. & G. P. Co.'s bill of March 6, '52, for labor and supplies furnished for mill		666 54
		30. For paid D. E. Carpenter, bill carrying boiler to mill		99 67
		For interest charged		12,732 82
		Balance this acct. transferred to acct. L. B. Frieze, assignee		13,098 98
				$277,683 83

	1851.	CREDIT.		
	Dec.	31. By amt. paid Geo. N. Young for 26½ days as engineer, at 7s., Aug. 25, '51	30 92	

273	By amt. paid John Lynch for 18 days' work as engineer, at 7s., Aug. 25, '51	21 00		
	By 1,754 lbs. coal, at $6 per ton, Sept. 6, '51	5 25		
	By bricks and mortar furnished for oven in Sampson house	14 60		
	For sundries paid by him at mill for labor and materials, as by bill, viz:			
	Labor and material on store-house	1,323 22		
	Labor and material on dye-house	580 05		
	Lumber and mortar for coal-shed	72 00		
	Material and labor on Place-house	41 29		
	Labor, excavating extra for office-cellar	44 00		
	Material for privy	9 34		
	Labor, grading and levelling round mill	519 18		
	Labor and material for cassimere department	172 18		
				2,833 03
1852.				
June 30.	By paid by him to P. P. Kimball, Sept. 19, 1851	15 00		
	By paid by him to wool-packers, Sept. 24, 1851	24 00		
	By paid by him for A. Winsor's bill, Aug. 8, 1851	29 48		
				68 48
Sept. 13.	By amt. Thurston, Greene & Co.'s bill, tools for engine, chgd. June 30, '52, the same having been previously chgd. in acct.; cash, June 9, '52			213 67
1853.				
March 2.	By amt. Chas. T. James' acct., building Atlantic De Laine Mill, chgd. construction acct		260,000 00	
	For balance interest on this acct. to date		14,568 65	
				$277,683 83

274 C.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

PROVIDENCE, *January 21st*, 1851.

Received of George W. Chapin, attorney for stockholders of De Laine Mill, drafts amounting to thirty-six thousand dollars, being in full for first payment, as per contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with C. T. James.

(Signed) C. T. JAMES,
Per L. B. FRIEZE,

PROVIDENCE, *February 15th*, 1851.

Received of George W. Chapin, attorney for stockholders of De Laine Mill, drafts amounting to thirty-six thousand dollars, being amount of

second payment in full, as per contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with C. T. James.

C. T. JAMES,
(Signed) Per L. B. FRIEZE, *Atty.*

PROVIDENCE, *March 15th*, 1851.

Received of George W. Chapin, attorney for stockholders of De Laine Mill, drafts amounting to thirty-six thousand dollars, being amount of third payment in full, as per contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with C. T. James.

C. T. JAMES,
(Signed) Per L. B. FRIEZE, *Atty.*

PROVIDENCE, *April 15th*, 1851.

Received of George W. Chapin, attorney for stockholders of De Laine Mill, drafts amounting to thirty-six thousand dollars, being amount of fourth payment in full, as per contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with C. T. James.

C. T. JAMES,
(Signed) Per L. B. FRIEZE, *Atty.*

Received of George W. Chapin, attorney for stockholders of De Laine works, drafts amounting to thirty-six thousand dollars, being
275 amount of fifth assessment in full, as per contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with C. T. James.

C. T. JAMES,
$36,000. (Signed) Per L. B. FRIEZE, *Atty.*

PROVIDENCE, *June 14th*, 1851.

Received of Atlantic De Laine Co. drafts amounting to thirty-six thousand dollars, being amount of sixth payment in full, as by contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with Charles T. James.

CHARLES T. JAMES,
(Signed) Per L. B. FRIEZE, *Atty.*

Received, Providence, July 2, 1851, of the Atlantic De Laine Co., their three notes of $5,000 each, 4 months this day, on account of the final payment of the contract entered into by George W. Chapin, attorney, and Hill, Carpenter & Co. with Charles T. James.

CHAS. T. JAMES,
(Signed) Per L. B. FRIEZE, *Atty.*

D.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

(Copy.)

GEORGE W. CHAPIN, esq., *Treas. A. D. Mill:*

DEAR SIR: A combination of circumstances compels me to lay the following before you, viz:

I must have, in some form, and at an early day, about seventy-five thousand dollars, for six, eight, and twelve months, to enable me to go

on with my contract; otherwise I may be compelled to stop until such time as my affairs can be satisfactorily arranged. It is not for the want of property that compels me to make this request, but it is for the want of money. It is in the power of the company, and for their interest, to render me immediate assistance at this time.

A definite answer is respectfully requested at the earliest possible moment.

Yours, truly,
(Signed) CHARLES T. JAMES.

PROVIDENCE, *July 28th*, 1851.

276 E.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

This agreement, made this first day of August, in the year of our Lord one thousand eight hundred and fifty-one, by and between Hill, Carpenter & Co., the Globe Printing Company, all of Providence, in the State of Rhode Island; Hoyt & Tillinghast, of the city of New York; Hacker, Lea & Co., of the city of Philadelphia; and Dodge, Tucker & Co., of the city of Boston, of the first part, and Charles T. James of the second part, witnesseth:

That the said parties of the first part have agreed to loan to the said party of the second part the sum of twenty-five thousand dollars in cash, to be paid to him on the execution and delivery of the mortgages and other securities hereinafter named. And they have also agreed to make and deliver to the party of the second part their several notes, of even date herewith, to the amount, in all, of fifty thousand dollars, in sums and signed by such of the parties of the first part as they may prefer, and which notes shall be payable to the said Charles T. James, or order, in six months from date, etc.

And they also agree that at the maturity and payment by said James of the said notes, they will, at the request of said James, renew the same for another term of six months.

And the said Charles T. James, the party of the second part, in consideration of the premises, hereby agrees that he will, upon the receipt of said money and notes, give to each of the parties of the first part advancing said money his promissory note for the amount of cash by said party advanced, payable in twelve months after date, with interest, and that he will assume the payment of the notes so given to him as aforesaid, to the amount of fifty thousand dollars, and also of all notes given in renewal of the same, or of any part thereof, and at the maturity thereof will pay the same.

And that he will, on receipt of said money and notes, or of any part thereof, execute and deliver to said parties of the first part, or to such person or persons as they may designate, for their use, one or more mortgages, deeds of trust, or other conveyances of the real and personal estate hereinafter named, for the purpose of securing the repayment of the said sum of twenty-five thousand dollars, with the interest thereof,

277 and for the indemnity to the said parties of the first part from any loss or damage on account of the notes so given by them for fifty thousand dollars as aforesaid, or of any note or notes given in renewal thereof, or of any part thereof.

And he further agrees that the following real and personal estate shall

be included in the mortgages or other conveyances to be given by him; that is to say, all the right, title, and interest of him, the said Charles T. James, in and to the capital stock of the Atlantic De Laine Company, a corporation incorporated by the general assembly of said State of Rhode Island; and in and to all the real and personal estate of the said corporation, whether the same be held by said corporation or by any person or persons in trust for them; and in and to all the real and personal estate held by him, the said James, and the parties of the first part, and others, either as partners or as tenants in common, or by any other person or persons in trust for him, and the said parties of the first part, and others.

Also, all the real estate of him, the said Charles T. James, situated in the city of Providence, free of all incumbrance, and in the towns of Warwick and Scituate, in said State of Rhode Island.

Also, certain notes to the amount of fifty thousand dollars, made by the Cannelton Manufacturing Company, in the State of Indiana, and the mortgage given for the security of said notes.

And also one thousand shares of the capital stock of the East Tennessee Mining and Manufacturing Company.

And for the consideration aforesaid the said Charles T. James further agrees that he will procure Alfred R. Fiske, of Lancaster, in the State of Pennsylvania, to write and become a party with him in the contract heretofore made between him and the said parties of the first part and others, bearing date on the first day of January, 1851, in relation to the erection of a factory in North Providence for the manufacture of mouslin de laines, in such manner as that the said Alfred R. Fiske shall become equally bound with the said Charles T. James to the parties named in said contract for the faithful performance of said contract in all its parts.

(Signed) HILL, CARPENTER & CO.,
GLOBE PRINTING CO.,
W. AND G. CHAPIN, *Agents.*
HOYT & TILLINGHAST,
HACKER, LEA & CO.,
DODGE, TUCKER & CO.,
By GEORGE W. CHAPIN.
CHAS. T. JAMES.

Witness: GEORGE W. MUNRO.

278 F

Annexed to the deposition of George W. Chapin this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

(Copy.)

DEAR SIR:

I propose to pay you, as trustee	$75,000
As treasurer, for money advanced, &c., &c.....	25,000
One hundred thousand dollars.....	$100,000

CONDITIONS.

First, that the mortgages be discharged.

Second, that all lien (if any) by the company on any property in which I have an interest be discharged.

Third, that whatever sum, on a full and satisfactory settlement between me and the company, be found due from me to said company shall be paid by my individual notes in two equal payments, of one and two years.

Yours, in haste,
(Signed) CHAS. T JAMES.

GEO. W. CHAPIN, Esq.
NEW YORK, *April 10th*, 1852.

G.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Whereas Messrs. Hill, Carpenter & Co. and George W. Chapin, all of the city of Providence, and State of Rhode Island, and the said George W. Chapin, as attorney for others, of the first part, and Charles T. James, of said Providence, of the second part, entered into a certain contract, bearing date the first day of January, A. D. 1851, for the purpose of building a mill at Olneyville for the manufacture of de laine, reference to said contract being had and made for the parties thereto and contents thereof;

And whereas said parties of the first part in said contract, and
279 others, afterwards obtained an act of incorporation from the general assembly of this State, at its May session, A. D. 1851, and have since organized under the same in the name of the Atlantic De Laine Company, as specified in said charter, reference thereto being had, as was contemplated at the date of said contract;

And whereas said parties to said contract went on with and under the same in the performance thereof until the second day of September, 1851, at which time said Charles T. James assigned and conveyed his property in trust for his creditors to Lyman B. Frieze—reference to said assignment being hereby had and made—provision being made therein for the performance of said contract by said Frieze, as assignee as aforesaid;

And whereas said James claims that before the date of his said assignment he had, besides performing his own contract, also, at the request of said parties of the first part in said contract and said Atlantic De Laine Company, done work and labor, and furnished and provided machinery, apparatus for machinery, materials, and property for them not specified or required by said contract; and that the said Lyman B. Frieze has, since said second day of September, 1851, also done work and labor, and furnished machinery, and apparatus and property, for said parties of first part and the Atlantic De Laine Company, outside of and not required by said contract, for which they claim payment;

And whereas said parties to said contract and said Atlantic De Laine Company and said Lyman B. Frieze, assignee as aforesaid, for the purpose of settling said matters and all other matters in dispute between said parties, have agreed to refer all the same to the arbitration and award of James Y. Smith and Thomas J. Hill, of said Providence, as follows: the said Hill, Carpenter & Co., and George W. Chapin, and the said George W. Chapin as attorney for others, as named in said contract, and said Atlantic De Laine Company, on the one part, and the said Charles T. James and Lyman B. Frieze, as assignee as aforesaid,

hereby agree to refer all claims, of every kind and nature, of said James or of said Frieze, either and both of them, or said parties of the first part, named in said contract, and in said Atlantic De Laine Company, and in either or both of them, as also all claims of said party of the first in said contract, and of said Atlantic De Laine Company, or either or both of them, or said James or Frieze, as assignee as aforesaid, to the final award and arbitration and decision of James Y. Smith and Thomas J. Hill, of said Providence, whose award in the premises shall be final and conclusive on all parties. And it is further agreed
280 that in case said Smith and Hill are not able to agree, then and in such case they two may agree and name a third person, and then the award of any two of said three shall be final and conclusive on said parties.

In witness whereof the parties hereto set their hands and seals this twenty-first day of June, A. D. 1852.

GEO. W. CHAPIN, [L. S.]
Treasurer Atlantic De Laine Co.
CHAS. T. JAMES. [L. S.]
L. B. FRIEZE, *Assignee.* [L. S.]

Signed, sealed, and delivered in presence of—
W. H. PARKHURST.
A. R. FISK.
W. E. BOURN.

H.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

(Copy.)

PROVIDENCE, *February* 15, 1853.

GEO. W. CHAPIN, Esq., *Trustee for Hill, Carpenter & Co. and others, and Treas. Atlantic De Laine Company:*

DEAR SIR: I feel it my duty to demand of you a statement of the condition, standing, and accounts of the Atlantic De Laine Company, so that I may be able to represent the De Laine stock, &c., which you have advertised, as trustee, to be sold on the 25th and 26th insts., in its true light and value, and make it sell for what it is worth.

Very truly, yours,
(Signed) L. B. FRIEZE,
Assignee of Charles T. James.

I.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

281 *Statement of the Atlantic De Laine Co., January 1st, 1853.*

Bills payable	$410,615 39
Due agents for advances on goods	90,926 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

Credit.

Cash and bills receivable, on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract-account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De Laines, cassimeres, on hand	149,516 74
Balance	70,365 53
	$789,541 55

I would state our directors estimate that $50,000, or more, of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.
(Signed) GEO. W. CHAPIN, *Treasurer.*
PROVIDENCE, *Feb.* 26, 1853.

J.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

(Copy.)

PROVIDENCE, *Feb.* 26, 1853.

Mr. L. B. FRIEZE, *Assignee:*

Herewith you have a statement of the affairs of our company. If you wish for any information more, and will state it in writing, I will furnish it, if in my power.

Very truly,
(Signed) GEO. W. CHAPIN, *Treasurer.*

282 K.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

PROVIDENCE, *March* 2, 1853.

Atlantic De Laine Co., to Charles T. James, Dr.:

To contract for building Atlantic De Laine Mill at Olneyville, for the manufacture of mouslin de laines, per contract entered into between Hill, Carpenter & Co., George W. Chapin, and George W. Chapin as attorney for others, on the first day of January, 1851	$260,000

Received payment,

CHAS. T. JAMES,
Per L. B. FRIEZE, *Assignee.*

L.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

PROVIDENCE, *March* 9, 1853.

For value received, the undersigned hereby transfers to the Atlantic De Laine Co., and to George W. Chapin, trustee for Hacker, Lea & Co., and others, the one hundred and thirteen shares of the capital stock of the said Atlantic De Laine Co., standing in the name of Charles T. James on their books.

L. B. FRIEZE,
Assignee of Charles T. James.

M.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

PROVIDENCE, *March* 11, 1853.

Received of George W. Chapin, treasurer of the Atlantic De
283 Laine Co., fifteen hundred dollars, in full, for their part of Josephus Baldwin's bill of bobbins, furnished Atlantic De Laine mill, October 17th, 1851, and in full as a close of the contracts and agreements entered into by and between said De Laine Co. and L. B. Frieze, assignee, on the second of March, 1853.

L. B. FRIEZE,
Assignee of C. T. James.

N.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Know all men by these presents that I, Lyman B. Frieze, of Providence, in the county of Providence and State of Rhode Island, assignee of Charles T. James, of said Providence, under and by virtue of a deed of assignment to me executed by said James on the second day of September, A. D. 1851, for and in consideration of the sum of eighty-three thousand dollars, paid to me as assignee as aforesaid, in release of the balance of all claims, of every kind and nature, of the Atlantic De Laine Company against the said Charles T. James, individually, and against me, the said Lyman B. Frieze, as assignee of said James, do hereby give, grant, bargain, sell, assign, transfer, set over, and deliver unto the said Atlantic De Laine Company, a manufacturing corporation duly established by the general assembly of the State of Rhode Island, &c., all the right, title, and interest which said Charles T. James had at the time of executing his said deed of assingment to me, and all the right, title, and interest which I, the said Lyman B. Frieze, as assignee of said Charles T. James, now have in and to the capital stock of the Atlantic De Laine Company, and in and to all the real and personal estate of the said corporation, whether the same is held by said corporation, or by any person or persons in trust for them.

To have and to hold the same, with all the rights and privileges and appurtenances thereof or thereunto appertaining to them, the said Atlantic De Laine Company, their successors and assigns forever.

And I, the said Lyman B. Frieze, for myself, my heirs, executors, and

administrators, do hereby agree to and with the said Atlantic De Laine Company, their successors and assigns, that I will warrant and defend the premises to them, the said Atlantic De Laine Company, against the lawful claims of all persons claiming by, through, or under me.

284 In witness whereof I, the said Lyman B. Frieze, assignee as aforesaid, have hereunto set my hand and seal, at said Providence, this second day of March, A. D. 1853, the words "the lawful claims of" being first interlined.

L. B. FRIEZE, [L. S.]
Assignee of Charles T. James.

Signed, sealed, and delivered in presence of—
HENRY MARTIN.

PROVIDENCE COUNTY, *ss:*

In Providence, this eleventh day of March, A. D. 1853, then Lyman B. Frieze personally appeared before me, and in his capacity as assignee acknowledged the preceding instrument, by him signed as assignee, to be his free act and deed.

HENRY MARTIN,
Justice of the Peace.

O.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Items charged to James' contract-account.

1851.			
Dec.	31.	To building various drains from the mill, as per plat on file, drains in black ink being chgd. C. T. James, drains in red ink being chgd. construction acct	287 78
		To coal used by engine in driving shafting, from Aug. 4 to Sept. 22, '51, 42½ tons, as cash Aug. 4, '51; 85 tons having been used for both engines during that time, costing $397.80	198 90
		To coal used as above, from Sept. 22 to Nov. 6, '51, when large engine started, 69½ tons, as cash Jan. 30, '52; 139 tons having been used as above during that time, costing $637.22	318 61
		To 1 wrench in Prov. Machine Co.'s bill, approved by A. R. Fisk, pd. Dec. 11, '51	18 00
		To 1 lap-apron, G. & D. Taylor & Co, acct., approved by A. R. Fisk, pd. Oct. 1, '51	20
		To amt. labor, paid Wilkinson, Wilbur & Sargent, and their hands, from July 28 to Aug. 16	127 05
		To amt. labor, paid same, from Aug. 16 to Sept. 13	364 18
285		To amt. labor, paid Wilbur & Sargent and their hands, from Sept. 13 to Oct. 11	374 00
		To amt. labor, paid Wilkinson, Wilbur & Sargent and their hands, from Oct. 11 to Nov. 8.	402 08
		To amt. labor, paid Wilber and his hands, from Nov. 8 to 15	42 71
		To amt. labor, paid Sargent and his hands, from Nov. 8 to 22	112 54

		To amt. labor, paid Wilkinson and his hands, from Nov. 8 to Dec. 6	114 25
1852.			
Jan.	14.	To amt. paid Brigham & Pierce, bill, 78 wool-baskets	197 00
March	31.	To amt. paid Pearce & Luther, bill, painting boxes .27	103 03
		To amt. paid Lemuel Angell, collector, bill, for tax assessed August, '51, in North Providence, on $75,000, with interest	169 12
April	24.	To amt. paid Burr & Shaw, bill, hose and pipes.	259 74
April	30.	To amt. paid Phenix I. Foundry, bill, for waste-gates, shafting, &c .29	59 48
May	29.	To amt. paid Pearce & Luther, 3 bills, painting, $62.63, $76.07, $117.30	256 00
		To amt. paid Prov. Gas Co., bill, for extra meter and fixings .28	51 60
		To amt. paid labor and material used about engine at mill, per Thurston, Greene & Co.'s bill.	720 84
June	12.	To amt. paid Thurston, Greene & Co., bill, various machines for mill .10	213 67
June	30.	To amt. paid J. R. Brown, bill, 1 watch-clock .25	44 00
		To amt. paid Pope & Cutter, bill, fitting up watch-clock.	31 00
		To amt. of Albert Dailey's bill, in part, as per our bill on file	501 02
		To amt. sundries of Brown & Baker, as per bill, cash Aug. 6, '52	173 41
		To amt. sundries of A. Anthony & Co., as per bill, cash June 30, '52	78 00
		To amt. sundries of N. H. Bradford & Co., as per bill, cash March 13, '52	95 86
		To amt. sundries of Wm. Earle, as per bill, cash June 30, '52	23 91
		To amt. sundries of H. W. Slocum, as per bill, cash May 22, '52	32 76
286		To amt. sundries of James Eames, as per bill	99 81
		To amt. sundries of Rose & Farnum, as per bill, cash June 30	29 66
		To amt. sundries of G. & D. Taylor & Co., as per bill, cash Sept. 5, '52	25 00
		To amt. sundries of W. Coleman & Sons, as per bill, cash June 30, '52	5 60
		To amt. sundries of Calder & Phillips, as per bill, cash June 30, '52	73 76
		To one-half amt. paid by us for horse-hire to April 24, cash March 31, '52	149 26
		To amt. work in smithy, as per acct. rendered	531 08
		To amt. paid P. Mathewson, stone for engine, cash May 14, '52	114 00
		To amt. paid A. & W. Sprague, for blanketing, cash June 30, '52	5 00
		To amt. paid Wm. Hudson, travelling expenses, cash June 30, '52	11 30
		To amt. paid Lewin & Fisk, labor on partition for dressing-room, cash Feb. 15, '52	19 50

		To amt. paid the Mrs. Reynolds & Hargraves, making beam-cloths, cash May 8, '52	9 17
		To amt. paid Mrs. Richardson, board of engine-hands, May 8, '52	36 00
		To amt. paid A. R. Fisk, April 30, '52	75 00
		To amt. paid Franklin Mfg. Co., I. Waterman & Co., and D. Hunt, bills, waste for cleaning machinery, Dec. 1, '51	39 21
		To amt. paid Rice & Congdon, speeder-belting, Nov. 18, '51	6 00
		To amt. sundries of the following persons, approved by A. R. Fisk, January, 1852:	
		A. Anthony & Co., picker leather, Aug. 12, '51.	8 47
		N. A. Eddy, 47 m. tacks, $3.58; tools and screws, $3.29; screws, files, and locks, $3.51, Oct. 1, '51	10 33
		S. A. Briggs, oil-drippers, Sept. 8, '51, Feb. 23, '52	63
		P. Grinnell & Sons, emery and files, Sept. '51.	1 93
		Wm. Earle, cotton duck, Oct. 1, '51	9 00
		To amt. Prov. Machine Co. bill, settled April 6, '52, less the item of commission chgd. Feb. 24, $111.72, and interest, $2.24—$113.96; whole bill, $1,060.23, less $113.96	946 27
June	30.	To amt. C. & H. S. Pierce bill, for baskets, Jan. 15, '52	40 00
		To amt. Thurston, Greene & Co. bill, tools for engine, June 9, '52	213 67
287		To amt. Globe Printing Co.' bill, bagging for covering steam-boiler	46 80
		To amt. paid for insurance on mill and machinery, on $53,000, for 60 days from July 30, '51, cash Aug. 18, '51	198 50
		To amt. paid for insurance on do. on $72,000, from Sept. 30, '51, to Feb. 1, '52, at 1¼ per ct. per annum average, Oct. 25, '51	300 00
Oct.	30.	To amt. paid N. A. Eddy, bill, hardware 8	57 74
		To amt. paid A. H. Manchester, bill, force-pump 16	122 94
Nov.	30.	To amt. paid Amoskeag Mfg. Co., bill, sundries 22	597 92
		To amt. paid freight plank from Boston	3 00
Dec.	31.	To amt. paid D. C. Murdock, bill, drop-wire, box, &c	58 00
		To amt. paid Howard & Davis, bill, clock and scales	64 00
		To amt. sundries in Wm. Mason & Co., bill, as pr. mem. on file, cash March 1, '53	802 07
		To amt. Thurston, Greene & Co., bill labor and materials on engine	3,614 88
		To amt. A. De Laine Mill, payments for labor, lumber, bricks, tools, &c., as pr. mem. on file.	1,967 27
		To amt. sundry items in Prov. Steam & Gas Pipe Co.'s bills for articles used in fitting up roller-room	80 92
		To amt. Prov. Steam & Gas Pipe Co.'s bill, labor at mill, &c., from March 22 to May 22, '52...	253 04

1853.			
Jan.	31.	To amt. paid Lewin, Kenyon & Co.'s bill, work on engine.....29	382 39
Feb.	28.	To amt. Thurston, Greene & Co., bill, boiler, Feb. 4, cash	3,243 14
March	31.	To amt. paid Edward Smith, bill, mule-regulator 15	340 00
		To amt. paid Calder & Phillips, bill, labor, &c..24	122 82
April	21.	To amt. Prov. Steam and Gas Pipe Co., bill of March 6, '52, for labor and supplies furnished for the mill	666 54
April	30.	To amt. paid D. E. Carpenter, bill, carrying boiler to mill 18	99 67
			$20,852 03

288 P.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

(Copy.)

We, the undersigned, Lyman B. Frieze, assignee of Charles T. James, of Providence, in the State of Rhode Island, and the Atlantic De Laine Company, of said Providence, in consideration of thirteen thousand five hundred dollars paid by William Mason & Company, of Taunton, in the county of Bristol, commonwealth of Massachusetts, do hereby agree and covenant, and jointly and severally bind ourselves, to transfer and deliver, by good and valid conveyance, within six months from the date hereof, to the said William Mason & Company, one hundred and thirty-five shares of the capital stock of the American Cannel-Coal Company, of Cannelton, in the State of Indiana, or to pay the said William Mason & Company legal interest upon the said above-mentioned sum from this date till such time as said shares shall be transferred and delivered, or said sum paid as aforesaid.

The above agreement is made upon the understanding and condition that the said William Mason & Company shall, as soon as practicable, transfer and deliver all the machinery necessary to complete their contract with said Charles T. James for the said Atlantic De Laine Company, reference to be had to the agreement made on the tenth day of October last, between said William Mason & Company and the said Lyman B. Frieze, assignee, as aforesaid, for a more particular description.

Witness our hands this twentieth day of January, in the year eighteen hundred and fifty-two.

(Signed) L. B. FRIEZE,
Assignee of Charles T. James.
ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treasurer.*

In presence of—
B. S. BOURN.

The word "per" stricken out on the eighteenth line by mutual consent.

L. B. FRIEZE, *Assignee.*
ATLANTIC DE LAINE CO.,
GEO. W. CHAPIN, *Treasurer.*

289

Q.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

BOSTON, *April* 18, 1859.

In consideration of the sum of six thousand five hundred and fifty dollars, paid by the Atlantic De Laine Company, through Geo. W. Chapin, their treasurer, in full satisfaction of the preceding contract, it is agreed that the same is fully settled, satisfied, and discharged; and the suits heretofore brought upon the same shall be discontinued without costs to either party.

WILLIAM MASON & CO., AND
GEORGE B. UPTON,
WILLIAM E. COFFIN,
OAKES AMES,
Assignees of Wm. Mason & Co.,
By their attorney, E. R. HOAR.

The foregoing settlement is approved by us.

GEORGE B. UPTON,
WM. E. COFFIN,
OAKES AMES,
Assignees of Wm. Mason & Co.

R.

Annexed to the deposition of George W. Chapin by me, this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Charter.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS:

In general assembly, May session, A. D. 1851.

An act to incorporate the Atlantic De Laine Company.

It is enacted by the general assembly as follows:

SECTION 1. Josiah Chapin, Charles T. James, Paris Hill, Joseph Carpenter, and George W. Chapin, their associates, successors, and assigns, are hereby constituted and created a body corporate and politic, by the name of "Atlantic De Laine Company," for manufacturing and other purposes, and by that name shall have perpetual succession,
290 and are made able and capable in law to have, possess, purchase, receive, hold, enjoy, and retain unto them, their successors and assigns, estates of every kind, real, personal, or mixed, and the same to manage, let, lease, assign, grant, bargain, sell, alien, convey, and dispose of at pleasure; to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended against, in all courts of law and equity, and before all tribunals whatever; to make, have, and use a common seal, and the same to break, alter, and renew at pleasure; and shall also have power to make, establish, and put in execution such

by-laws and regulations, not contrary to law, as they may deem necessary or convenient for the government of said corporation, and the management of their property and concerns, and the duties, services, and employments of their officers and agents, and the same to change, alter, or amend; and generally to do and execute all acts, matters, and things which may be necessary to carry into effect the powers and privileges herein granted.

SEC. 2. The capital stock of said corporationn shall not exceed five hundred thousand dollars, to be fixed in amount by vote of the company, and to be divided into shares of one thousand dollars each. The shares in said capital stock are hereby declared to be personal estate, and shall be transferred by bill of sale, which shall be recorded in the office of the treasurer of the corporation in such books as he shall provide for that purpose; provided, however, that no stockholder, who may wish to dispose of his stock, shall transfer, in manner aforesaid, any share or shares of the capital stock of said corporation, without first giving the refusal of the same to the corporation at the price at which he is willing to sell; and provided, also, that the shares in said capital stock shall not be liable to assessment after the capital stock, so fixed in amount as aforesaid, has been paid in, except in equal proportions and by the consent of the stockholders owning at least three-fourths of the shares of the capital stock of the corporation.

SEC. 3. There shall be an annual meeting of the stockholders holden in Providence, on the first Wednesday of February, for the choice of a president, treasurer, and board of directors, consisting of five, and such other officers as they may deem necessary or expedient, who shall severally hold their offices for one year, and until others shall be elected and qualified to act in their stead, unless sooner removed by death, or by a vote of the corporation. The treasurer, who shall reside in the county of Providence, shall, before entering upon the discharge of his duty as such, give bond, with surety, in such sum as the board of directors shall designate, for the faithful discharge of his
291 duty as treasurer, which bond shall be deposited with the president. And if the corporation should fail to elect their officers on the day appointed for their annual election, it shall be lawful for them so to do at any subsequent legal meeting, to be holden within one year, notice of the same to be given in the same manner as shall be prescribed for calling special meetings. Special meetings may be called at any time by the treasurer, and in case of his absence, neglect, inability, or refusal, by stockholders, holding one-fifth of the shares of the capital stock, and shall be notified in the manner to be prescribed by the by-laws of the corporation. All or any business of the corporation may be transacted, and acted on, at any legal meeting thereof, and each stockholder, at all meetings of the corporation, shall, in person, or by proxy duly authorized in writing, be entitled to one vote for each and every share by him owned, not exceeding fifty shares, and to one additional vote for every ten shares over and above said fifty shares, and the holders of one hundred shares, with the president or treasurer, shall constitute a quorum.

SEC. 4. The stock or shares of each and every stockholder shall be pledged and liable to the corporation for all debts and demands due and owing from such stockholder to said corporation, whether over due or due at a day future, and whether the same shall arise from assessments or instalments, or in any other manner; and in case any stockholder shall refuse or neglect to pay such debt or demand to the treasurer thereof within thirty days after the same shall become due and

payable, then it shall be lawful for the treasurer to sell, at public auction, the share or shares of such delinquent stockholder, or so many thereof as may be necessary to satisfy the debt or demand with all incidental expenses, first giving notice of the time and place of sale, with the sum due from such stockholder, for which his stock shall be pledged or liable, at least twice a week for sixty days, prior to the day of sale, in one of the newspapers printed in Providence; and such sale shall be a legal transfer of the share or shares so sold, and a certificate thereof, signed by the treasurer of said corporation, shall be issued to the purchaser or purchasers thereof, and shall be recorded in the office of the treasurer in the books of the company provided for that purpose by him, and thereupon such purchaser or purchasers shall be considered, to all intents and purposes, the proprietor of such share or shares; and the balance of the money arising from the sale of such share or shares, after discharging the debt or demand for which the same was pledged or liable, with the expenses, shall be paid to the delinquent pro-
292 prietor, or to his assigns; and provided, that if the proceeds of such sale be not sufficient to discharge such debt or demand, the corporation may have their action against the debtor for the balance due.

SEC. 5. Said corporation shall have a place of business in the city of Providence; and in all proceedings in law or equity, in which said company shall be a party, the leaving an attested copy of the writ, summons, or other process with the treasurer of said corporation or with some agent of said corporation, at such place of business, shall be a sufficient service thereof.

SEC. 6. The validity of this charter shall not be impaired by the omission of the stockholders to hold their annual meeting on the day hereinbefore in section third appointed.

SEC. 7. The above-named George W. Chapin is hereby authorized to call the first meeting of the stockholders whenever he shall deem it expedient, for the election of officers and organization under this charter, and for the transaction of any other business of the corporation, by giving notice of the time and place thereof to the persons named in the first section of this act; and the officers so elected shall continue in office until the first annual meeting, as hereinbefore named, and until others are elected in their stead.

SEC. 8. The liability of the members and officers of this corporation for the debts of the company shall be fixed and limited by, and the corporation, its members and officers, shall in all respects be subject to the provisions of an act entitled "An act in relation to manufacturing corporations," passed at the June session of the general assembly, A. D. 1847.

True copy. Witness:

ASA POTTER, [L. S.]
Secretary of State.

S.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Whereas Charles T. James, of Providence, by his deed, dated September second, A. D. 1851, voluntarily assigned all his property, real and personal, to me, in trust, for the benefit of his creditors, and therein,

as his first appropriation for their benefit, authorized, empowered,
293 and required me, as his assignee aforesaid, to go on and complete his contracts with the Atlantic De Laine Company, for the completion of their new mill in Olneyville, and getting the same in operation, and to complete all subcontracts, and to do all acts and things requisite for the completing of said contracts with said Atlantic De Laine Company, and to appropriate therefor, out of the assigned property, so much as might be necessary to complete what then remained to be done and completed of said contract, restricting such appropriation to paying for work hereafter to be done, and for machinery and materials hereafter to be delivered for the above purpose;

And whereas the time limited in said contracts for the completion thereof hath long since elapsed, and the same remain unperformed and incomplete, to the loss and injury of said Atlantic De Laine Company, and moneys cannot be raised by me in time for the due completion of said contracts, without sacrifice of and embarrassment to the assigned estate:

Now know all men by these presents, that I, Lyman B. Frieze, assignee as aforesaid, do hereby request, authorize, and empower the said Atlantic De Laine Company to pay and advance all sums of money to whomsoever the same may be due or become due, for the completion of the contracts aforesaid, the said company first obtaining my written assent to such payment, as evidence that the same is embraced within the clause of said assignment aforementioned; and in consideration of such payments and advances to be by them made, I hereby, in my said capacity, covenant and agree with said Atlantic De Laine Company to repay and re-imburse them all such payments and advances by them so aforesaid made, with interest, out of the first moneys by me realized from said assigned estate, in compliance with the spirit and terms of said deed of assignment as aforesaid.

In witness whereof I have hereunto set my hand and seal this day of October, A. D. 1851.

L. B. FRIEZE, *Assignee.* [L. S.]

W. H. PARKHURST.

294 T.

Annexed to the deposition of George W. Chapin by me this 20th March, A. D. 1865.

JOSEPH S. PITMAN, *Examiner.*

Geo. W. Chapin, trustee, in account with Geo. W. Chapin.

1851.		DR.	
Aug. 1.	To bills receivable, due Feb. 4, '52		$50,000 00
	" cash		25,000 00
1852.			
Sept. 30.	" copying sundry papers and telegram		7 75
Dec. 22.	" Tillinghast & Bradley's bill		75 00
1853.			
March.	" drawing and recording sundry papers		12 81
	" Ames & Payne's bill		674 71
	" sundry telegrams and expenses		7 91
	" balance of interest		5,319 94
			$81,098 12

1852.		Cr.	
April 10.	By rec'd A. B. Dike, for stock on farm		$1,320 26
Aug. 3.	" " " " " " Warwick farm		5,786 79
Oct. 11.	" " for Cannelton mortgage note		21,000 00
1853.			
March.	" " " homestead estate		9,850 00
	" " A. B. Dike, for stock on farm, less charges		48 49
	" amount due carried forward		43,092 58
			$81,098 12

1853.	Dr.	
March 2.	For amount due this date	$43,092 58

295 U.

Annexed to the deposition of George W. Chapin by me, April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Construction account to March 2, 1853.

1851.			
Nov. 15.	Paid Daniel E. Carpenter, for moving barn to B. house lot		25 00
Nov. 21.	Paid Wm. W. Arnold & Son, for windows for store-house		87 44
Nov. 26.	Paid Duty Evans, for iron hoops for cassimere dept		27 11
Dec. 1.	Paid E. A. Durfee bill, 98 cords stone for coal-shed		130 67
	Paid E. A. Durfee bill, 13 cords stone for small drains		17 33
	Paid E. A. Durfee bill, 8 cords stone for blacksmith's shop		10 67
	Paid E. A. Durfee bill, 9 cords stone for well at Place house		12 00
Dec. 3.	Paid Wm. Elsbree, jr., for grading and filling land in front and rear of mill		350 00
Dec. 11.	Paid Prov. Machine Co. bill, for sundries for cassimere dep't		268 01
Dec. 12.	Paid Wm. Elsbree, jr., in full for grading land around the mill		420 78
Dec. 13.	Paid Peirce & Luther bill, painting, &c., viz: warehouse, $64.23; dye-house, $18.31; blacksmith's shop, $3.64; fixtures in cassimere dept., $31.12; partitions do., $41.20; glazing and painting sign, $5.84; measuring paint, $3.17		167 51
Dec. 19.	Paid Martin A. Snow bill, work on drains, &c., in front of mill		30 09
	Paid Ray Clapp bill, labor on waste house and tenter bar		133 45
Dec. 20.	Paid Ray Clapp bill, lowering fence in front of Fenner house		25 50
Dec. 27.	Paid H. G. Mumford bill, curbing stone for front of mill and Place house		172 70
Dec. 31.	Paid Hill, Carpenter & Co. bill, sundries for cassimere dept	2,536 03	

296 Dec. 31. For the following items transferred to this acct. from cassimere dept. acct.:

For L. H. Thurber's bill, hoops for tubs, pd. Oct. 17, '51		19 00
For Thos. Barrows bill, drying machine, pd. Oct. 20, '51		450 00
For J. A. Gowdey & Son bill, reeds, pd. Oct. 20, '51		64 37
For Rankin & Alger, flock pulverizer, pd. Nov. 19, '51		100 00
For amount paid A. Dailey, June 25, 1851, for lumber furnished by him for building warehouse		1,200 00
Dec. 31. For Jonathan S. Angell's bill, on file, of services rendered in purchasing land, moving and repairing buildings, grading, &c., &c.		618 33
Dec. 31. For Angell & Sampson bill, building boarding-house by contract		3,600 00
For their bill building wash-house, labor on barn, fences, drains, pumps, well, lead-pipe, grading, &c		540 01
For the following bills on account boarding-house, paid by them:		
B. B. Wood, for mason-work and materials	$70 19	
David Patt, " painting and "	24 89	
S. Andrews, " labor on drains	18 22	
Abiel Sampson, for copper kettle	13 00	
Wm. Belcher, " plumbing	4 46	130 76
For their bill lumber and labor for 4 tubs for cassimere dept		280 41
For Lewin & Fisk bill, labor, &c., settled Nov. 22, 1851, viz:		
624 days' work on store-house, $1,040; 104 do. on dye-house, $173.33; 161 do. do. on coal-shed, $268.75; 34¼ do. do. on blacksmith's shop, $57.08		1,539 16
342 do. do. on fixtures for cassimere dept.		570 00
Labor and materials for wool-drying board, indigo-box, hand-barrows, and fitting boxes for cassimere dept		190 18
Dec. 31. For John M. Herring's bills, slating roof and sides store-house; his bill slating roof of dye-house; his bill slating roof of blacksmith shop		1,731 39
For Martin A. Snow bill, labor on coal-shed, $87.96; on warehouse, $29.74; on the Place house, $51.87; for his bill pointing foundation of warehouse, $6; of dry-house, $3		178 57
297 For his bill labor on drains and dry-house		212 75
For his bill building blacksmith's shop by contract		215 00
For his bill labor on forge in do		7 83
Dec. 31. For our note at 6 mos. from Nov. 16, 1851, to Calder & Phillips, for their bill labor and stock for cassimere dept		369 86

		For part Albert Dailey's bill, lumber used for cassimere dept	136	64	
		For Cleaveland & Bro. bill, furniture, paid Oct. 25, 1851	95	00	
		For John Miller bill, leather, paid Nov. 15, 1851	202	39	
Dec.	31.	For labor paid at mill for grading, &c	274	76	
Dec.	31.	For Thomas Whitaker & Son bill, steam-pipe, fittings and labor furnished for cassimere dept., $935.21, less 20 per cent. deduction on pipe, &c., $122.71	812	50	
Dec.	31.	For Willard Williams & Co. bill, cassimere machinery, settled Sept. 22, by Hill, Carpenter & Co.'s note, dute Feb. 13, '52	5,757	12	
Dec.	31.	For William M. Bickford's bill, cassimere machinery, on file	5,427	83	
Dec.	31.	By a wrench in Prov. Machine Co.'s bill, approved by A. R. Fiske, paid Dec. 11, '51			18 00
		By a lap apron charged in G. & D. Taylor's acc't, approved by A. R. Fiske, paid Oct. 1, '51			20
Dec.	31.	For amount paid at mill for grading around the mill	20	12	
Dec.	31.	For sundries paid by Charles T. James at mill, for labor and materials, as by bill on file, viz:			
		Labor and material on store-house	1,323	22	
		" " " " dye "	580	05	
		Lumber and mortar for coal-shed	72	00	
		Material and labor on Place house	41	29	
		Labor excavating extra for office cellar	44	00	
		Material for privy	9	34	
		Labor grading and levelling around mill	519	18	
		" and material for cassimere dept	172	18	
1852.					
Jan.	7.	Paid Josephus Baldwin's bill, shuttles and bobbins for cassimere dep't	93	54	
298	Jan. 13.	Paid Thurston, Greene & Co. bill of wheelbarrows	35	00	
		Paid Thurston, Greene & Co. bill, labor, shafting, &c., for cassimere dept	97	85	
Jan.	21.	Paid N. A. Eddy bill, hardware for cassimere dept	68	75	
Feb.	16.	Paid Bradford & Hall's bill, lime	18	93	
"	20.	" Reuben Daniels' bill for pickers for cassimere dept	200	00	
Feb.	28.	For amount Freeman Berry's bill of lightning rods on boarding-house	16	15	
March	2.	Paid Parks & Woolson's bill, set blades for cassimere dept	100	00	
April	17.	Paid Lewin & Fisk, for 12 days' labor on storehouse, omitted in their acct	20	00	
April	29.	Paid Phenix Iron Foundry bill, for indigo mills, &c., for cassimere dept	114	18	
May	5.	Paid Woonsocket Furnace Co., bill of duster, for cassimere dept	105	00	

May	7.	Paid Manchester & Hopkins' bill, stone and cement		24 95	
May	28.	Paid Fales & Jenks' bill, force-pump for cassimere department		102 00	
June	7.	Paid Prov. Steam & Gas Pipe Co.'s bill, pipe for extinguishing fire		601 73	
June	21.	Paid Narragansett Brick Co. bill, bricks		74 31	
June	25.	Paid Pope & Cutter bill, fitting up watch clocks		43 68	
		Paid Joseph R. Brown bill, 1 watch clock		44 00	
June	30.	Paid Gorham & Thurber bill, articles presented A. Anthony for services rendered		72 16	
		Paid Coggeshall & Barstow bill, tinning roof, &c., round house		43 84	
June	30.	For amount paid at mill for wool-house fixtures, for stone and labor on river-wall, for labor, turf and loam in grading yard		1,478 17	
		For Albert Dailey's bill lumber, for flooring in warehouse and for plank-walks		338 09	
		Paid labor and sundries laying floor on wool house, to Angell & Sampson		98 61	
		For amount labor and supplies laying walk in yard, to Angell & Sampson		73 33	
299		For amount labor and supplies building waste house by Angell & Sampson	39 20		
June	30.	For balance of interest in acc't	1,028 91		
July	8.	Paid A. Sampson, for land in addition to boarding-house lot	155 00		
Nov.	22.	Paid freight wool cards from Danielsonville	46 66		
Dec.	2.	For our note 6 mos. from Nov. 4, to Quinebaugh Co., for their bill of machinery	2,338 10		
Dec.	31.	For 100 dresser beams in William Mason & Co.'s bill, cash Dec. 31, 1852	300 00		
Dec.	31.	For 1 flock cutter, of Hill, Carpenter & Co.	40 00		
		For balance of interest in acct	1,086 86		
		By 2 cassimere looms, Dec. 9			300 00
		" 2 " " " 20			250 00
		" Balance forward			40,250 33
			$40,818 53		$40,818 53
1852.	Dec. 31.	For balance forward	$40,250 33		
1853.	Jan. 21.	Paid H. R. Worthington bill, force-pump	505 00		
	Feb. 1.	For 1 screw-valve for force-pump, of Thurston, Greene & Co	40 00		
			$40,795 33		

Annexed to the deposition of George W. Chapin by me, April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Bills payable December 31, 1852.

Date.	To whom.	For.	Time.	Due.	Amount.
1852.					
July 2	Hill, Carpenter & Co	Wool	6 mos	Jan. 2- 5	$2,000 00
2	....do	"	6 "	2- 5	2,000 00
2	....do	"	6 "	2- 5	5,000 00
3	Hoyt, Tillinghast & Co		6 "	3- 6	5,000 00
2	North Kingston Bank	Loan	6 "	2- 5	2,000 00
5	Hacker, Lea & Co		6 "	5- 8	5,000 00
6	Hill, Carpenter & Co	Wool	6 "	6- 9	10,000 00
7	....do	"	6 "	7-10	5,000 00
8	....do	"	6 "	8-11	5,000 00
13	....do	"	6 "	13-16	6,000 00
15	....do	"	6 "	15-18	5,000 00
19	....do	"	6 "	19-22	5,000 00
21	....do	"	6 "	21-24	5,000 00
19	....do	"	6 "	19-22	4,000 00
26	....do	"	6 "	26-29	5,000 00
28	....do	"	6 "	28-31	5,000 00
29	....do	"	6 "	29- 1	5,000 00
31	....do	"	6 "	31- 3	5,000 00
13	D. Ballou & Co	Cotton	6 "	13-16	4,145 88
22	O. Taft & Co	"	6 "	22-25	1,254 75
28	Bennett & Baker	Coal	6 "	28-31	1,285 41
Sept. 15	American Bank	Loan	4 "	15-18	3,000 00
"	Manufacturers' do	"	4 "	" "	3,000 00
"	Bank Commerce	"	4 "	" "	3,000 00
Aug. 4	Hill, Carpenter & Co	Wool	6 "	Feb. 4- 7	5,000 00
2	....do	"	6 "	2- 5	5,000 00
3	....do	"	6 "	3- 6	10,000 00
7	....do	"	6 "	7-10	3,000 00
7	....do	"	6 "	7-10	5,000 00
9	....do	"	6 "	9-12	5,000 00
12	....do	"	6 "	12-15	5,000 00
14	D. Ballou & Co	Cotton	6 "	14-17	4,145 88
17	Hill, Carpenter & Co	Wool	6 "	17-20	6,000 00
21	....do	"	6 "	21-24	5,000 00
27	....do	"	6 "	21-30	5,000 00
301 30	....do	"	6 "	30- 3	5,000 00
19	Union Bank	Loan	6 "	19-22	1,000 00
Oct. 14	American do	"	4 "	14-17	3,000 00
14	Bank of Commerce	"	4 "	14-17	3,000 00
14	Manufacturers' Bank	"	4 "	14-17	3,000 00
15	Bennett & Baker	Coal	4 "	15-18	1,146 64
Sept. 2	Hill, Carpenter & Co	Wool	6 "	M'ch 2- 5	5,000 00
5	....do	"	6 "	5- 8	5,000 00
11	....do	"	6 "	11-14	8,000 00
27	....do	"	6 "	27-30	10,000 00
17	W. A. Robinson & Co	Supplies	6 "	17-20	1,328 53
1	Albert Dailey	Lumber	6 "	1- 4	949 04
Nov. 11	American Bank	Loan	4 "	11-14	3,000 00
11	Manufacturers' Bank	"	4 "	" "	3,000 00
11	Bank of Commerce	"	4 "	" "	3,000 00
11	Bennett & Baker	Coal	4 "	" "	1,193 21
26	....do	"	4 "	26-29	1,192 98
Sept. 19	Barker, Whitaker & Co	Supplies	6 "	19-22	480 75
28	Earl P. Mason & Co	"	6 "	28-31	2,061 29
Oct. 1	Hill, Carpenter & Co	Wool	6 "	April 1- 4	3,150 45
7	....do	"	6 "	7-10	5,000 00
9	Thurston, Greene & Co	Machinery	6 "	9-12	1,000 00
11	Hacker, Lea & Co		6 "	11-14	5,000 00
11	Hoyt, Tillinghast & Co		6 "	" "	5,000 00
25	Lime Rock Bank	Loan	6 "	25-28	5,000 00
22	Tiverton Bank	"	6 "	22-25	2,000 00
12	Hill, Carpenter & Co	Wool	6 "	12-15	5,000 00
17	....do	"	6 "	17-20	5,000 00
12	E. B. Ballou	Cotton	6 "	12-15	584 50
11	A. F. Adie	Supplies	6 "	11-14	1,190 96
Dec. 10	American Bank	Loan	4 "	10-13	1,500 00
10	Manufacturers' Bank	"	4 "	" "	1,500 00
10	Bank of Commerce	"	4 "	" "	1,500 00
28	Wm. Mason & Co	Machinery	4 "	28- 1	1,913 45
Nov. 1	Hill, Carpenter & Co	Wool	6 "	May 1- 4	5,000 00
5	....do	"	6 "	5- 8	5,000 00
15	Hacker, Lea & Co		6 "	15-18	5,000 00
18	Hoyt, Tillinghast & Co		6 "	18-21	5,000 00
19	James B. Hoskins	Loan	6 "	19-22	2,000 00
19	....do	"	6 "	" "	3,000 00
15	Dodge, Tucker & Co		6 "	15-18	5,000 00
17	Hill, Carpenter & Co		6 "	17-20	5,000 00
22	....do		6 "	22-25	5,000 00
26	....do	Wool	6 "	26-29	5,000 00
3	....do	"	6 "	3- 6	5,000 00
7	....do	"	6 "	7-10	5,000 00

302	4	Quinebaug Co	Machinery	6	mos.	May 4- 7	2,338 10
	17	Globe Printing Co	Loan	6	"	17-20	2,000 00
Dec.	1	Hill, Carpenter & Co	Wool	6	"	June 1- 4	5,000 00
	3	Hoyt, Tillinghast & Co		6	"	3- 6	5,000 00
	6	Hacker, Lea & Co		6	"	6-.9	5,000 00
	6	Dodge, Tucker & Co		6	"	6- 9	5,000 00
	13	Hacker, Lea & Co		6	"	13-16	6,000 00
	16	Hill, Carpenter & Co	Wool	6	"	16-19	5,000 00
	20	....do	"	6	"	20-23	5,000 00
	23	....do	"	6	"	23-26	5,000 00
	27	....do	"	6	"	27-30	5,000 00
	20	....do	"	6	"	20-23	7,500 00
	22	Hoyt, Tillinghast & Co		6	"	22-25	3,000 00
	23	Dodge, Tucker & Co		6	"	23-26	6,000 00
	24	Thurston, Greene & Co	Machinery	6	"	24-27	3,000 00
	27	Hoyt, Tillinghast & Co		6	"	27-30	5,000 00
	27	Hacker, Lea & Co		6	"	" "	6,000 00
	31	Globe Printing Co	Loan	6	"	30- 3	2,000 00
	31	....do	"	6	"	" "	2,158 14
	8	Wm. J. King & Co	Cotton	6	"	8-11	3,095 43
	31	Globe Printing Co	Loan	6	"	July 7-10	1,500 00
	31	....do	"	6	"	" " "	1,500 00
							410,615 39

The notes given Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., are for collateral of their acceptances of our drafts loaned us.

W.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH PITMAN, *Examiner.*

Amounts due agents for advances, Jan. 1, 1853.

Hacker, Lea & Co	$31,296 37
Dodge, Tucker & Co	22,767 41
Hoyt, Tillinghast & Co	34,398 02
Day, Owen & Co	1,564 39
	$90,026 19

303

X.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Due various persons on account Jan. 1, 1853.

Hill, Carpenter & Co., balance of acct	$41,542 46
Globe Printing Co., " " "	888 12
Geo. W. Chapin, trustee, funds received and not distributed	8,524 30
S. C. Blodget, balance of acct	50 00
Thurston, Greene & Co., balance of acct	399 56
	$51,404 44

Y.

Annexed to the deposition of George W. Chapin by me April 1, 1865
JOSEPH S. PITMAN, *Examiner.*

Stockholders Jan. 1, 1853.

Hill, Carpenter & Co	30	shares, paid	$30,000 00
Hoyt & Tillinghast	25	"	25,000 00
Hacker, Lea & Co	25	"	25,000 00
Globe Printing Co	25	"	25,000 00

C. T. James	113	"	113,000 00
Dodge, Tucker & Co	15	"	15,000 00
Day, Owen & Co	3	"	3,000 00
N. P. Bartlett	1	"	1,000 00
Harrison & Co. had paid on acct. their subscription			495 53
			$237,495 53

It will be seen by the above that all the stockholders had paid their subscription in full, excepting C. T. James and Harrison & Co., who had failed.

I append a copy of H. & Co.'s stock account, by which it will be seen that the only payment by them was $500 in cash, all the time-drafts being protested and paid by us, with $4.47 expenses thereon.

This explains why the item of capital stock was $237,495.53.

304 Y.—Continued.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Harrison & Co., stock account Jan. 1, 1853.

CR.

1851.			
April	15.	By our draft 6 mos. this date	$4,000 00
May	15.	" " " 6 " " "	3,500 00
June	12.	" " " 6 " " "	1,000 00
	12.	" " " at sight	500 00
			$9,000 00

DR.

Oct.	24.	For paid their acceptance, due 15-18 inst	4,000 00
	24.	" " protest and postages	2 10
Nov.	26.	" " their acceptance, due 15-18 inst	3,500 00
Dec.	27.	" " " " 12-15 "	1,000 00
	27.	" " protest and postages	2 37
	31.	" amount forward	495 53
			$9,000 00

Z.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Cash and bills receivable on hand Jan. 1, 1853.

CASH.

In Bank of Commerce	$809 16	
" Providence Bank	1,046 08	
" Manufacturers' "	1,012 44	
" Union "	52 45	
" American "	6 83	
" Drawer	2,400 00	
		$5,326 96

BILLS RECEIVABLE.

Treas. N. Providence school-district No. 8, Dec. 1, 1852, 12 mos	5,500 00	
Dexter Ballou & Co., Nov. 12, 1852, 6 mos	2,757 96	
		$8,257 96
		$13,584 92

305 Z.—Continued.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Cost of real estate, cassimere department, and amount paid C. T. James' contract account.

Cost of real estate	$13,140 60
" " cassimere department, which is included in construction account, to Dec. 31, 1852, and marked U	40,250 33
Amount paid C. T. James' contract account, the account being marked B, in which exhibit the items are contained	256,615 11
	$310,006 04

Cost of real estate.

1850.		
Dec. 28. Paid A. Anthony & Co., on acct., as part payment of land bought of them	500 00	
Dec. 28. Paid A. G. Place, on acct., as part payment of land bought of him	1,000 00	
Dec. 28. Paid Mary Kennedy in full for lot of land and house thereon bought of her, as by deed	1,000 00	
1851.		
Feb. 19. Paid Robert Wilson, administrator on estate of Cyril S. Carpenter, for lot of land bought of him, as by deed	1,000 00	
April 12. Paid A. G. Place in full for lot of land and house thereon bought of him in Dec., 1850	2,500 00	
June 5. Paid Robert Wilson, administrator, for the "Gore" lot of land, between lot of land bought of A. G. Place and Tar Bridge	800 00	
June 6. Paid Leander Fenner for house and lot next west of the mill, as by deed	2,000 00	
June 6. Paid Wm. Randall for lot of land for boarding-house, as by deed	800 00	
306 June 24. Paid A. Anthony & Co. for lot of land nearly opposite the mill, on which Place's house was moved	600 00	
June 24. Paid A. Anthony & Co. for balance of purchase of land in Dec., 1850	2,800 00	

Aug. 8.	By amount received for house and barn sold		100 00
Aug. 23.	Paid Samuel Tweed for services in purchasing land in Dec., '50	25 00	
Oct. 4.	Paid Cushing & Farnum for surveying	8 00	
1852.			
June 30.	For amount paid for insurance on boarding, Place and Fenner houses, Dec. 31, 1851	42 26	
June 30.	For amount Angell & Sampson's bill, labor, and sundries for boarding-house	64 46	
	For their bill, labor, and sundries for Fenner house	85 49	
	For their bill, labor, and sundries for Place house	15 39	
	For balance forward		13,140 60
		$13,240 60	$13,240 60

Z.—Continued.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Amounts due from sundry persons Jan. 1, 1853.

A. Dailey, for notes given him on acct. of lumber for storehouse, &c	$1,900 00	
Prov. S. & G. P. Co., balance of acct	161 38	$2,061 38

Wool, cotton, and supplies at mill Jan. 1, 1853.

Wool, 332,540 lbs	$147,823 96
Cotton, 28,470 "	3,642 98
De laines, stock in process	22,306 26
Cassimeres, " " "	7,554 57
Supplies, including drugs, dye-stuffs, starch, coal, harnesses, bobbins, brooms, &c	9,364 40
	$190,692 17

307 *De laines and cassimeres on hand Jan.* 1, 1853.

De laines	$147,734 30
Cassimeres	1,782 44
	$149,516 74

The above de laines were sold in 1853 and 1854 by Hoyt, Tillinghast & Co., Hacker, Lea & Co., Dodge, Tucker & Co., and Day, Owen & Co., and netted $139,245.56, being $8,488.74 less than their estimated value.
The cassimeres were sold in 1853, by the same parties, averaging about 69 cts. yer yard, or $1,907.06.

AA.

Annexed to the deposition of George W. Chapin by me, April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Lyman B. Frieze, assignee, account.

1851.			
Oct.	11.	For our note at 4 mos. from date, favor Thurston, Greene & Co., for machinery furnished Charles T. James	3,000 00
Oct.	14.	For our note at 4 mos. from date, favor Carpenter & Vermilye, for amount their judgment, and interest on same, against Chas. T. James, for	2,611 93
Oct.	14.	For our note 4 mos. from date, favor Hoyt & Tillinghast, for amt. cost in above judgment.	184 47
Oct.	15.	Our note at 6 mos. from date, favor Hoyt & Tillinghast, for amount duties, expenses and interest on English machinery for C. T. James.	1,273 19
Oct.	16.	For our note at 4 mos. from date, favor Evarts & Co., for amount their claim for duties and expenses paid on English machinery for Charles T. James	1,600 00
Oct.	18.	For amount our draft this date on Hacker, Lea & Co., at 6 mos. from 23d inst., remitted them in payment of their acct. moneys borrowed by him, and interest on same	2,244 80
Oct.	31.	Paid schooner Star, bill, freight 13	28 32
		Paid W. R. R., bill, freight 14	69 64
		" Boston and Prov. R. R., bill, freight 16	6 39
		" Pierce & Luther, by order of C. T. James. 25	1,000 00
		" Boston and Prov. R. R., freight-bill 28	144 34
308		" freight-bills 30	13 27
		" Sloop Frederic Brown, bill, freight	62 28
		" Boston and Prov. R. R., " " 31	46 22
Nov.	12.	For our note to Thurston, Greene & Co., at 4 mos. from 12th inst., for their bill, stock, and work	2,182 26
Nov.	12.	For our note to Albert Dailey, at 4 mos. from Oct. 7, for his bill lumber	498 45
Nov.	15.	For our 3 notes to Bancroft & Sellers, at 4 mos. from 1st inst., of $500 each, for machinery, payable at office of Hacker, Lea & Co	1,500 00
		For our 2 notes to Bancroft & Sellers, at 4 mos. from date, for $500 and $434.15 for machinery, payable at office of Hacker, Lea & Co	934 15
		For our note to Ray Clapp, at 4 mos. from , for balance bill, fence	224 90
Nov.	15.	For interest and expenses on our 3 drafts of $5,500 each, of 3d inst., on Hacker, Lea & Co., Hoyt & Tillinghast, and Dodge, Tucker & Co., as by his receipt of 3d inst	852 96
Nov.	22.	For our note to Hill, Carpenter & Co., at 6 mos. from Aug. 1, for amount Amoskeag Co. bill, machinery and interest	4,136 55
Nov.	26.	For insurance and drayage machinery in New York, paid by H. & T	17 75

Nov.	29.	Paid your order to Ray Clapp.....1	75 00
		Paid Geo. H. Wilbur, bill transp'tion 12th inst.14	72 03
		" John H. Potter, for 1 doubler 15	140 00
		" Ray Clapp, by order.....15	120 00
		" B. & Prov. R. R. Co., bills, freight.....20	123 92
		" R. Waterman, in full 22	19 00
		" Ray Clapp, by order.....29	50 00
Dec.	3.	For our note at 4 mos. from 2d inst., to Thurston, Greene & Co., for their bill, stock, and work.....	1,639 25
Dec.	26.	For our note at 6 mos. from date, to Thurston, Greene & Co., for their bill, stock, and work, payable in Boston.....	2,007 21
Dec.	31.	Paid Lewin & Fiske, bill, labor, &c.....12	497 05
		" Geo. H. Wilbur, bill, transportation....15	29 47
		" sundry R. R. freight-bills.....	137 52
		" Ray Clapp, balance bill of columns....19	74 88
		" Martin A. Snow, bill, labor at mill.....	94 17
		" B. Williams, bill, stone block.....20	6 50
		" Lewis & Dempster, bill, plastering engine-room and office.....	250 00
309		Paid Pierce & Luther, on acct.....	100 00
		" S. C. Combs & Co., bill, lathes.....	112 00
		" Burr & Shaw, bill, hose and pipes.....22	226 87
		" Albert Dailey's bill, lumber for columns..	94 12
		" N. A. Eddy, bill, hardware.....	142 25
		" Lewin & Fiske, bill, labor.....24	288 66
		" B. Williams, bill, block.....	6 50
		" sundry telegraphs.....	6 11
		" George W. Chapin, traveling expenses, &c., as per bill.....	29 86
		For part Albert Dailey's bill, lumber used at the mill, as by his approval on file.....	432 10
		For Galen Spare's bill, ladders, pd. Oct. 10, 1851.	105 58
		" sundries in Barker & Whitaker's acct. on file.	231 69
		" " " E. P. Mason & Co., " " "	3 08
		" " " A. Lyon's acct., on file.....	3 00
		" " " Geo. H. Whitney acct., on file.	1 00
Dec.	31.	For amt. paid by Hacker, Lea & Co. for Jos. Lea travelling expenses in October.....	110 93
		For labor paid for him at the mill for 4 weeks, ending Nov. 8, cash Nov. 14, 1851	695 13
		For labor paid for him at the mill for 4 weeks, ending Dec. 6, cash Dec. 12, '51.....	1,328 69
		For labor pd. for him at the mill from Dec. 6 to date	631 72
1852.			
Jan.	1.	Paid his order favor Bridgham & Pierce.....	250 00
Jan.	2.	Paid Geo. H. Wilbur's bill, transportation.....	28 53
		Paid sundry freight bills.....	30 36
Jan.	7.	Paid his order favor N. G. Thom.....	30 00
"	9.	" Russell Millerd bill, covering rolls.....	173 01
		Paid Lewin & Fiske bill, labor	237 30
Jan.	10.	Paid John Burns' bill, springing windows.....	77 57
		Paid Hill, Carpenter & Co. for interest and expenses on 2 notes of $2,500 each, as per memo. on file.....	269 46

Jan.	24.	Paid his order favor Pierce & Luther	100 00
"	31.	For cash paid labor, his men at mill.....9	90 36
		For acceptance of his draft at 4 mos. from 1st inst., favor of John Kendrick.....1	291 00
		For acceptance of his draft at 4 mos. from 14th inst., favor John Kendrick.....14	300 00
		For acceptance of his draft at 4 mos. from 23d inst., favor of John Kendrick.....23	350 00
		For acceptance of his draft at 60 days from 24th inst., favor Pearce & Luther.....27	200 00
310		For our note at 4 mos. from 16th inst., favor Calder & Phillips.....16	322 69
		For our note at 6 mos. from 27th inst., favor Thurston, Greene & Co.....27	1,360 05
		For our note at 6 mos. from 30th inst., favor Prov. Steam & Gas P. Co.....30	1,399 30
		For our note at 4 mos. from 31st inst., favor Prov. Machine Co.....31	712 94
Feb.	2.	Paid Globe Printing Co., bill for drawing various papers	23 46
Feb.	7.	Paid Geo. H. Wilbur's bill, transportation	59 39
"	9.	" sundry freight bills	189 95
		Paid Lewin & Fiske bill, labor at mill	373 84
Feb.	14.	For our note at 2 mos. from 13th inst., to S. J. Watson & Co. for their bill, stock and work,	623 69
		For labor his men at mill 4 weeks, ending Jan. 31, as cash, 6th inst	743 65
Feb.	23.	Paid S. A. Briggs' bill, tin work	104 20
March	13.	For our note at 6 mos. from 12th inst., favor Thurston, Greene & Co. for their bill, stock and work	1,171 63
		Paid sundry freight bills.....10	236 75
		" Geo. H. Wilbur bill, transportation	76 15
		" Wm. G. White bill, paints and painting machinery	73 51
March	27.	For our note 6 mos. from 21st inst., $900.00	
		" " " 6 " " 21st " 962.84	
		(to O. Mason & Co. for bill, belting, &c.)	1,862 84
March	31.	Paid Wm. W. Arnold & Son bill, glazing ...25	10 20
		Paid Josephus Baldwin bill, shuttles.....30	58 67
April	2.	Paid Bicknall & Skinner bill, grindstones	13 44
"	3.	" Lewin & Fiske bill, boxes, &c	430 00
"	10.	For our note 6 mos. from 6th inst., favor Prov. Steam and Gas Pipe Co	1,500 00
April	23.	Paid Pierce & Luther by your order	59 70
"	27.	For our acceptance his draft favor John Kendrick, 4 mos. from date	300 00
April	30.	For cash paid sundry persons for making loom aprons, cash Feb. 6	56 95
		For cash paid his laborers at mill 4 weeks, ending Feb. 28, cash March 5	513 67
		For cash paid his laborers at mill 4 weeks, March 29, cash April 2d	351 15
		For cash paid James H. Bicknall at mill, April 7.	138 33
311	May	12. For our note at 4 mos. from date, to Thurston, Greene & Co., for their bill, machinery, and work	990 62

May	27.	Paid J. A. Gowdey & Son, bill, reeds	489 12
		Paid Spooner & Draper, bill, burlaps, &c	49 53
May	29.	Paid A. Burgess & Son, bill, pickers	154 06
June	10.	" his order, favor A. R. Fisk	100 00
"	15.	For amount Albert Dailey's bill, lumber, &c., on his acct	141 84
June	21.	Paid Fales & Jenks, for pump	140 00
"	25.	" his order, favor L. B. Frieze	112 50
"	30.	" James Eames, bill, tin ware	171 07
		Paid Mrs. Richardson, Feb. 6, '52	119 50

For the following amount, sundries not previously charged, approved by him Jan. 27, 1852, cash Dec. 31, 1851:

		J. A. Gowdey & Son., 12 reeds, Oct. 21, '51	8 29
		Samuel A. Briggs, oil drops, &c., Oct., '51	7 99
		P. Grinnell & Sons, sundries, Nov., '51	25 61
		N. H. Bradford, tubs and baskets, Dec., '51	11 50
		H. W. Slocum, walnut and lumber, Dec., '51	2 46
		Manchester & Hopkins, stone and cement	7 19
		Phenix Iron Foundry, iron sinks, Dec., '51	17 90
		A. Anthony & Co., lacing and tallow, Oct., '51	10 61
		Wm. Earle, lines, Dec., '51	2 62
		Spooner & Draper, burlaps and ticks, Nov., '51	49 53
		N. A. Eddy, rope and screws, Oct., '51	4 71
		For balance of interest in acct. to date	766 06
Dec.	31.	For sundries in William Mason & Co.'s bill, cash March 1, 1853	637 93
Dec.	31.	For W. B. Greene's expenses to Boston in October, 1851	22 96
Dec.	31.	For balance of interest in acct. to date	1,560 47
			$53,314 77

1852.				
Dec.	31.	For balance of acct. due this date	$53,314 77	
1853.				
March.		For H. N. Hooper's bill, bell	579 50	
		For balance of interest acct	945 59	
		By C. T. James' contract acct		13,098 98
		" balance acct. carried forward		41,740 88
			$54,839 86	$54,839 86
		For balance of acct	$41,740 88	

BB.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Statement of the Atlantic De Laine Co., March 1, 1853.

DR.

Bills payable	$434,260 61
Due Hoyt, Tillinghast & Co., for advances	63,398 02
" Hacker, Lea & Co., " "	38,796 37

" Dodge, Tucker & Co. " "	32,767 41
" Hill, Carpenter & Co	24,758 69
" Day, Owen & Co., for advances	1,564 39
" Geo. W. Chapin, trustee	8,524 30
" Globe Printing Co., on account	888 12
" S. C. Blodget, " "	50 00
Stock account	237,495 33
	$842,503 44

CR.

Cash	$24,204 73
Interest	8,479 78
Albert Dailey	1,900 00
Stock at mill, and amount paid for labor and supplies since Jan. 1st, 1853	28,229 39
L. B. Frieze, assignee	53,314 77
Cotton at mill Jan. 1st, 1853, and sent to mill to date	11,923 67
Construction account	40,795 33
Cassimeres in agents' hands and stock in process at mill	9,038 97
De laines in agents' hands and stock in process at mill	170,208 64
Wool at mill Jan. 1st, 1853, and purchased since	150,210 76
Charles T. James' contract account	260,240 64
Real estate	13,140 60
Geo. W. Chapin	326 37
Providence Steam and Gas Pipe Co	162 38
For amount of loss	70,327 41
	$842,503 44

313

CC.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

None of the cotton on hand January 1st, 1853, was sold, and only about 40,000 lbs. of the wool, bringing $19,942.31.

The rest was manufactured into de laines and cassimeres. The de laines made from the wool cost, including cotton and manufacturing, $187,176.82, and netted about $177,315.16.

The cassimeres made from said wool cost, including manufacturing, $32,581.58, and netted about $35,500.

DD.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Statement of profit and loss.

	Profits.	Loss.
In 1853	$1,945 28	
" 1854		$17,190 94
" 1855	29,983 50	
" 1856	34,545 89	
" 1857		10,070 65
" 1858	56,941 78	
	$123,426 45	$27,261 59

314 EE.

Annexed to the deposition of George W. Chapin by me April 1, 1865.
JOSEPH S. PITMAN, *Examiner.*

Bills receivable in Exhibit T.

1851.						
Aug. 1.	G. W. Chapin, trustee, on	Hill, Carpenter & Co.,	6 mos			$5,000 00
1.	"	"	"	6	"	5,000 00
1.	"	"	"	6	"	2,500 00
1.	"	Hoyt & Tillinghast,	6	"		5,416 67
1.	"	"	"	6	"	5,000 00
1.	"	Hacker, Lea & Co.,	6	"		5,416 67
1.	"	"	"	6	"	5,000 00
1.	"	Globe Printing Co.,	6	"		3,416 66
1.	"	"	"	6	"	3,000 00
1.	"	"	"	6	"	2,000 00
1.	"	Dodge, Tucker & Co.,	6	"		3,250 00
1.	"	"	"	6	"	3,000 00
						$50,000 00

The "balance of interest was arrived at" by charging interest on the above bills receivable after February 1st, 1852, and by charging interest on the cash advances of $25,000 from August 1st, 1851, and crediting interest on all amounts received by the trustee.

315 *Agreement.—Filed March* 30, 1865.

It is agreed that the depositions of Joseph Lea and Edwin Hoyt, the first of which was taken April 6, 1861, and the second June 1, 1861, and which were excluded at the former hearing on motion of the complainants, may be regarded as in the cause, with the same effect as though the same had been again taken under the order for again taking the deposition of George W. Chapin and others.

But it is distinctly understood that this agreement is not in any manner to affect, prejudice, or impair the force and effect of any objection to the competency of the said witnesses, or any other legal objection to the whole or any part of their said depositions.

JAMES H. PARSONS,
For Complainant.
ABRAHAM PAYNE,
For Respondents.

MARCH 30, 1865.

316

317 RHODE ISLAND DISTRICT, *sc.:*

Circuit court United States.

ADMINISTRATRIX OF CHARLES T. JAMES
vs.
ATLANTIC DE LAINE COMPANY. } In equity.

Upon motion of the defendants, and by consent of parties, it is ordered that the defendants may, on or before June 1, 1866, make such proof as they be advised of the exhibits annexed to the deposition of George W. Chapin heretofore taken in this cause, and this agreement is not to affect, prejudice, or impair the force and effect of any and all objections to the

competency of such proof as may be offered, or any other legal objections to the whole or any part thereof, the said proof to be printed, if at all, at the expense of the defendants, and that Francis Colwell, jr., be appointed examiner to take such proof. And it being understood that proof upon no other matter, subject, or thing is to be taken by him.

Assented to.

A. PAYNE, *for Defendants.*
JAMES H. PARSONS, *for Complainants.*

A true copy. Attest:

HENRY PITMAN, *Clerk.*

318 UNITED STATES OF AMERICA,
Rhode Island district, sc.:

The circuit court of the United States within and for the Rhode Island district, to Francis Colwell, jr., esq., of the city of Providence, in said district, greeting:

Know ye that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the depositions of such persons as may be brought before you, by either party, under the agreement annexed hereto, to be used in a certain cause now pending in court, wherein Lucinda James, administratrix of Charles T. James, is complainant, against the Atlantic De Laine Company.

And to this end, at certain days, to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination, as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed, and directed to the circuit court aforesaid, as soon as may be.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Salmon P. Chace, at Providence, this 28th day of May, in the year of our Lord one thousand eight hundred and sixty-six.

HENRY PITMAN, *Clerk.*

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the deposition, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponent whilst giving deposition in answer to the interrogatories annexed to this commission. And you shall
319 take such deposition in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponent and yourself, and such disinterested person (if any) as you may think fit to appoint as clerk to assist you in reducing the deposition to writing. And you shall put the several interrogatories and cross-interrogatories to the deponent in their order, and take the answer of the deponent to each fully and clearly.

RHODE ISLAND DISTRICT, *sc:*

At Providence, this 28th day of May, A. D. 1866, personally appeared the within-named Francis Colwell, jr., and made oath that he would

faithfully and impartially discharge the duties reposed in him by the within commission according to the best of his skill and understanding.

Before me,

HENRY PITMAN, *Clerk.*

RHODE ISLAND DISTRICT, *sc:*

ADMINISTRATOR OF CHARLES T. JAMES
vs.
ATLANTIC DE LAINE COMPANY.

To the United States marshal of said district and his deputies:

The undersigned having been appointed examiner, to take certain proof in said cause, and whereas my office, No. 9, Weybosset block, (opposite the post-office,) Providence, is by me appointed the place, and the first day of June, A. D. 1866, at 10 o'clock a. m., the time of taking the same, you are hereby required to notify Lucinda James of the place and time aforesaid, at least twenty-four hours before said time, that she may attend to put interrogatories to such witnesses as may be then and there examined before me, and also to notify John Gardner, George W. Monro, Abraham Payne, and William H. Parkhurst, of the place and time aforesaid, that they are required then and there to give testimony of what they know relative to the matters then and there to be inquired of. Hereof fail not, and true return make of this writ.

Given under my hand and seal this 29th day of May, A. D. 1866.

FRANCIS COLWELL, JR.,
Examiner.

320 RDOHE ISLAND DISTRICT, *sc:*

PROVIDENCE, *May* 30, 1866.

I have summoned George W. Monro and William H. Parkhurst to appear at the time, place, and for the purposes named herein, and have paid them for one day's attendance each, and one mile travel each.

LYMAN UPHAM,
Dep. U. S. Mar.

Paid witnesses' services and travel, $7.38.

PROVIDENCE, *sc:*

PROVIDENCE, *May* 29, 1866.

I, James H. Parsons, attorney for the within-named Lucinda James, hereby, for the said Lucinda James, acknowledge legal service of the within summons.

JAMES H. PARSONS,
Atty. for L. James, Admx.

UNITED STATES OF AMERICA,
Rhode Island District, sc:

Be it remembered that on this second day of June, in the year of our Lord one thousand eight hundred and sixty-six, I, Francis Colwell, jr., an examiner duly appointed by the circuit court of the United States for the district of Rhode Island, did call and cause to be and personally appear before me at my office, No. 9, Weybosset block, in the city of Providence, in the State of Rhode Island, in said district, (said examination having been postponed by agreement between counsel for each party, from June 1st, A. D. 1866, to this day,) Mr. George W. Monro, Mr. William H. Parkhurst, and Mr. Henry Martin, to testify and the truth to say on the part and behalf of the respondents in a certain suit

or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Rhode Island, wherein the administratrix of Charles T. James is complainant, and the Atlantic De Laine Company are respondents; and the said George W. Monro, William H. Parkhurst, and Henry Martin, each being of lawful age, and each having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine each of said persons, and they did thereupon testify and say as follows, in the deposition hereto annexed, and herewith enclosed.

FRANCIS COLWELL, JR.,
Examiner.

321 RHODE ISLAND DISTRICT, *sc:*

ADMINISTRATRIX CHARLES T. JAMES
vs.
ATLANTIC DE LAINE COMPANY.

Deposition of George W. Monro.

I, GEORGE W. MONRO, of Providence, in the county of Providence, in the State of Rhode Island, being duly sworn, on oath depose and say:

(James H. Parsons for complainants, objects to all testimony given by this witness.)

Interrogatories by A. Payne, esq.

Question 1. What is your age, residence, and occupation?

Answer 1. Age, 36; residence, Providence; occupation, book-keeper.

Q. 2. Are you acquainted with the signature of Lyman B. Frieze, and have you seen him write?

A. 2. I am acquainted with his signature, and have seen him write a good many times.

Q. 3. Please examine the seven receipts now produced and shown to you, marked "C," and numbered 1, 2, 3, 4, 5, 6, and 7, to be annexed to this deposition, purporting to be signed Charles T. James per L. B. Frieze, and Charles T. James per L. B. Frieze, atty., and say if the same is the signature of Lyman B. Frieze signed to each.

A. 3. I have examined the signature to the receipts shown to me, and find it in each case to be the signature of Lyman B. Frieze.

Q. 4. Please examine the paper shown to you by the examiner, marked "H," purporting to be signed L. B. Frieze, assignee of Charles T. James, and say whether the same is the signature of L. B. Frieze.

A. 4. I have examined the paper; it is the signature of L. B. Frieze.

322 Q. 5. Please examine the five papers hereto annexed, marked "K, L, M, N, and S," purporting to be signed L. B. Frieze, assignee of Charles T. James, and state whether the signature annexed to each of the same is the signature of L. B. Frieze.

A. 5. I have examined the papers, and find the signature to each to be that of L. B. Frieze.

Q. 6. Please examine the paper hereto annexed, marked "I," and state whether the name of the witness thereto signed is in your own handwriting, and whether the parties signed the same in your presence.

A. 6. The name of the witness in the paper is my name and signa-

ture, and I saw all the parties sign the paper whose names appear in the same.

Q. 7. Are you acquainted with the signature of Charles T. James, and have you seen him write?

A. 7. I am acquainted with his signature, or was, and have seen him write.

Q. 8. Please examine the papers hereto annexed, and marked "D, E," and state whether the signature annexed to each of the same is the handwriting of Charles T. James.

A. 8. I have examined the same. The signatures to each is that of Charles T. James.

Q. 9. Are you acquainted with the handwriting of George W. Chapin, and have you seen him write?

A. 9. I am acquainted with his handwriting, and have seen him write.

Q. 10. Please examine the papers J, I, and state whether each of the same is a press copy, including signature in the handwriting of George W. Chapin.

A. 10. I have examined the papers marked "I and J," and find each of the same is a press copy, including the signature in the handwriting of George W. Chapin.

Q. 11. Please examine the paper hereto annexed, marked "P," and state whether the signature to the same, purporting to be by L. B.
323 Frieze, assignee of Charles T. James, and Atlantic De Laine Company, George W. Chapin, treasurer; see the signature respectively of said Frieze and Chapin.

A. 11. They are the signatures of Frieze and Chapin.

Q. 12. State whether B. S. Bourn, the witness to the same, is living.

A. 12. He is not.

GEORGE W. MONRO.

Sworn to and subscribed before me this second day of June, A. D. 1856.

FRANCIS COLWELL, JR.,
Examiner.

[U. S. R. S., five cents.]

Witnesses attendance one day, $1.50; 1 mile travel, 5 cents.

Deposition of William H. Parkhurst.

I, WILLIAM H. PARKHURST, being duly sworn, on oath depose and say:

(Mr. James H. Parsons, counsel for complainants, objects to all the testimony given by the witness upon this examination.)

Interrogatories by A. Payne, esq.:

Question 1. Please look at the paper shown to you by the examiner, marked "G," and say whether the signature of the first witness to the same is in your handwriting, and whether the names of the parties thereto were signed in your presence.

Answer 1. The signature of the first witness in said paper is in my own handwriting, and I presume the names were all signed in my presence. I have no recollection now of the matter, but I know that the signature on the paper of George W. Chapin is his, and I know that the name of L. B. Frieze, signed to that paper, is the signature of L. B. Frieze; and also that the name Charles T. James, signed to said paper,

is the signature of Charles T. James; I think it was signed in my presence.

W. H. PARKHURST.

Sworn to and subscribed before me this 2d day of June, A. D. 1866.
FRANCIS COLWELL, JR.,
Examiner.

[U. S. R. S., five cents.]

Witness fees, attendance one day, $1.50; travel, 5 cts.; $1.55.

324 *Deposition of Henry Martin.*

I, HENRY MARTIN, of Providence, of lawful age, being duly sworn, on oath depose and say:

(James H. Parsens objects to all the testimony given by this witness.)

Interrogatories by A. Payne, esq.:

Question 1. Please examine the paper hereto annexed, marked "N," and say whether the name of the witness thereto signed is in your handwriting, and whether the parties thereto signed the same in your presence.

Answer 1. The paper exhibited has been shown to me, and the name of the witness thereto is in my handwriting, and the same was executed by Lyman B. Frieze in my presence, and by him acknowledged before me as a justice of the peace.

HENRY MARTIN.

Sworn to and subscribed before me this 2d day of June, A. D. 1866.
FRANCIS COLWELL, JR.,
Examiner.

[U. S. R. S., five cents.]

Witness fees, attendance 1 day, $1.50; 1 mile travel, 5 cents.

It was agreed before the examiner between the counsel for both parties that the exhibits referred to in the aforegoing depositions are the same as heretofore printed, and annexed to the deposition of George W. Chapin, taken in said case before Joseph S. Pitman, examiner, April 1st, A. D. 1865.

FRANCIS COLWELL, JR.,
Examiner.

And said cause came on to be heard at the November term, 1866, of said court upon the bill, pleadings, & testimony taken in said cause, and was argued by counsel of the respective parties and held for advisement.

And at the November term, 1867, the following opinion was delivered and the following decree entered:

324*a* *Opinion.*

In the circuit court of the United States for the district of Rhode Island. November term, 1867.

LUCINDA JAMES, ADMINISTRATRIX OF CHARLES T. JAMES, *vs.* THE ATLANTIC DE LAINE COMPANY ET AL. } In equity.

CLIFFORD, *P. J.*

The original complainant, on the first day of January, 1851, entered into a contract with certain persons therein named, to erect certain

buildings of certain prescribed dimensions, adapted to the purpose of a factory for the manufacture of de laines. Terms of the contract required that the other contracting parties should furnish the land for the site, and that they should pay to the complainant for the materials to be furnished by him in erecting the mills and supplying them with machinery, and for his services, the sum of two hundred and sixty thousand dollars, in certain installments, as therein provided. Conditions of the instrument required the complainant to complete the works by the first of August following, and the stipulation was that he should take the general charge of the mills for the term of two years from the
324*b* date of the contract. Progress was made in the works, but the parties, in May of that year, procured an act of incorporation and made a supplemental contract, in which the original complainant agreed that the respondent corporation might assume the entire obligations of those who had contracted with him, and that he would proceed to complete the contract as if it had been originally made with the respondent corporation, and stipulated to discharge the individual parties from all liability, except as stockholders of the company. Parties concede that the company was duly organized, with a capital stock of three hundred thousand dollars, divided into shares of one thousand dollars each, and the record shows that the complainant subscribed for one-half of the amount of the capital stock. Unable to complete the undertaking without a loan, the complainant, on the first day of August, in the same year, borrowed of the other contracting parties the sum of seventy-five thousand dollars to carry on the work, and, as security for the payment of the same, gave them a mortgage of that date of his homestead and other valuable real estate, and of all his interest in the respondent corporation, and of other rights and interests. They made the advance, but it was not sufficient to enable him to complete the undertaking, and on the second day of September of that year he made an *an* assignment of all his estate, real and personal and mixed, in trust for his creditors. Due conveyances of the same were accordingly executed, but the terms of the instrument empowered and required the assignee to complete the contract with the respondent corporation. Pursuant to that authority and requirement the assignee completed the buildings and put the mill in operation, and proceeded to execute the other trusts created under the instrument of assignment. Clear inference from the record is that the factory, including the buildings and machinery, were completed by the assignee under the provisions giving that authority, in the instrument of assignment, and it does not appear that the respondent corporation made any objections to the accceptance of the
324*c* works when the same were ready for delivery. Efforts were made by the complainant to raise money to pay his debts and to secure a reconveyance of the property, rights, and credits assigned and mortgaged, and as a means of promoting that object he requested the treasurer of the respondent corporation to furnish him with a statement of the company's accounts with his estate, with a view to the settlement of the same, but the treasurer of the company refused to furnish any such statement, and the complainant, as he alleges, was thereby prevented from procuring the necessary means for that purpose. Attempt was also made by the treasurer of the company, under a power contained in the mortgage, to sell the homestead and other separate property of the complainant mortgaged to secure the loan, but the allegation is that the company and their treasurer were prevented from so doing by a writ of injunction issued from the State court. Enjoined from selling the inter st of the complainant, the charge is that the respondent

corporation and their treasurer instituted other means to secure the absolute control of his stock, and to accomplish the same end. Being enjoined not to sell at the suit of the assignee, and being again requested to furnish a true statement of the accounts, their treasurer furnished a statement to the assignee. Material charge of the bill of complaint is that the statement so furnished was incorrect and untrue, and that it was so made and rendered with intent to deceive and defraud the assignee, and that the assignee was thereby deceived as to the true state of their accounts, and that he was thereby induced to entertain a proposition which resulted in a withdrawal of the injunction suit, and in the execution of mutual releases between him, as such assignee, and the respondent corporation in respect to the entire interest of the complainant in all the assigned and mortgaged property. Averment of the bill of complaint is that the complain't never assented to the proposition or to the settlement, but that the same was influenced and
324*d* procured by the false statement of the accounts between the parties, as rendered by the treasurer of the respondent corporation. Prayer of the bill of complaint is that the release given by the assignee to the respondent corporation may be declared void, and that it may be set aside as having been obtained by fraudulent representations and concealment, and for an account, and for other specific relief as prayed for in the bill of complaint. Principal issue between the parties grows out of the charge of fraudulent representation and concealment, which is expressly denied in the answer.

1. Before proceeding, however, to consider the merits of that issue, it becomes necessary to determine the question as to the competency of certain witnesses examined by the respondents.

Two depositions, to wit, that of George W. Chapin and that of Lyman B. Frieze, offered by the respondents, are objected to by the complainant, because they are parties to the suit. They were both taken (as now offered) subsequent to the passage of the act of the third of March, 1865, which provides that in actions by or against executors, administrators, or gua'diarns, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator intestate or ward unless called to testify thereto by the opposite party or required to testify thereto by the court. (13 Stat. at Large, 533.) Original complainant died on the day of October, 1862, intestate, as appears by the record. Tested by the foregoing provision alone, it is quite clear that the deponents are not competent witnesses to testify against the present complainant as to any transaction with or statement by her intestate, as they were not called to testify by the opposite party, nor required to testify by the court. Application for such an order was never made to the court, and none such was ever passed in the case. None of the prior proceedings have any effect to
324*e* take the two depositions out of the operation of that provision of law. Both of the deponents gave depositions in the case before the first hearing upon the merits. They were taken at that time also by the respondents, upon the ground that the practice of the State courts furnished the rule of decision, but they were stricken out by the order of the court before the hearing, because the parties, except in certain special cases, were not, under the general rules of equity law, competent witnesses in suits in equity, as previously decided by this court. (Mass. dist., term 18'.) Subsequently the parties were heard and the case was held under advisement; but the court at the June term ordered that the same should be re-argued, and thereupon it was ordered, upon

motion and consent of parties, that the time for taking further testimony be extended to the first day of November, in the same year. In the mean time the complainant died, and, the cause being revived, the time for taking testimony was extended from time to time until the first day of April, 1865, as appears in the supplemental record. Suffice it to say that both of these depositions was taken subsequent to the act of third of March, 1865, and the question of the competency of the deponents is controlled by that provision.

2. Restatement of the facts proved, except to a limited extent, is unnecessary, as they are succinctly stated in the narrative of the case. Execution of the contract and of the mortgage are admitted, and there is no controversy as to the deed of assignment and the appointment of the assignee in insolvency. Satisfactory proof also is exhibited that he completed the contract, and that the buildings and machinery were accepted by the other contracting parties. Respondents admit that the mutual releases as between the company and the assignee, as set forth in the bill of complaint, were duly executed. Effect of these several instruments was that the entire interest of the original com-
324*f* plainant in the company property and in the capital stock, and his entire interest in the mortgaged estate, passed into the hands of the respondent corporation. Mention is not made of the fact that the mortgage was executed to the treasurer of the company, as it is not controverted that he held it as trustee for the company. Corporation respondents claimed a lien upon the stock held by the original complainant under the provisions of their charter; and it is fully proved that their treasurer, in February, 1853, advertised the other mortgaged property for sale, and that they were prevented from carrying out their intention by the injunction suit prosecuted by the assignee. They also claimed damages for the delay in completion of the contract, but the original complainant claimed a much larger sum for moneys expended in extra work not included in the contract.

Full proof is also exhibited that the treasurer of the respondent corporation was several times requested to furnish a true statement of the accounts between the parties, and that the only one he ever did present deserving the name is the one he presented, or caused to be presented, to the assignee, and which was used as the basis of the computations at the date of the settlement. Beyond question that statement was inaccurate in large amounts, and greatly so to the prejudice of the original complainant.

Viewed in every aspect, it is the conclusion of the court not only that it was false, but that it was furnished with the intent to deceive and defraud, by promoting a settlement prejudicial to the original complainant, and more favorable to the respondent corporation than truth and justice would admit. Such being the views of the court, it is clear that the complainant is entitled to a decree, unless some one or more of the defenses can be sustained.

Settled rule of law is, that the assignor in such a case is entitled to the residue of the estate, after his debts outstanding at
324*g* the date of the assignment are paid. (Halsey vs. Whitney, 4 Mason, 222; Breashear vs. West, 7 Pet., 608.) By the extinguishment of the debts the assignee became the trustee of the complainant; and the latter, as the assignor, became clothed with all the rights and powers of a cestui que trust to the same extent as the creditors previously had whose claims he had extinguished. (Lazarus vs. Ins. Co., 5 Pick., 81.) Consequently, the complainant was the proper

party to come into a court of equity and pursue the trust-estate, it appearing that it had been fraudulently or improperly parted with by the trustee. (Story Eq. P., sec. 221; Oliver vs. Pratt, 3 How., 400; Lewin on Trusts, 730; Hovendell Annesley, 2 Sch. *vs.* Lef., 633.)

Where the purposes of the trust have been satisfied, equity in a proper case will compel a conveyance from the trustee to cestui qui trust, as he has the sole beneficial interest.

Argument for the respondent that these principles cannot apply in this case, because it appears that two of the debts of the original complainant have not been paid. Much weight would be given to that objection, as between the assignor and assignee, if the estate continued in the latter, and he was still engaged in executing the trust; but when it appears that the trust-property has been fraudulently or improperly conveyed to another, not as a means of executing; but as a means of extinguishing, the reversionary interest of the assignor, the objection cannot be sustained. Rights of such creditors in such a case will be protected in the decree granting relief. Want of diligence in the institution of the suit is another defense much pressed in the argument. The record shows that the mutual releases were executed on the second day of March, 1853, and the bill of complaint was filed on the first day of March, 1859, before the claim was barred by the statute of limitations. But
324*h* the argument is, that staleness of claim is often admitted in equity as a good answer to a bill of complaint, when the period which has elapsed is less than the time required as a legal bar to a common lawsuit; and the proposition is correct, as was held by this court and has since been affirmed in the supreme court. (Bridger vs. Bridger, 2 Wall., 94.) Correctness of that rule, properly applied, cannot be doubted, but it is equally clear that it should seldom or never be applied in cases of trust, where the means of knowledge are wholly or even chiefly on one side. When the fraud charged and proved consists of misrepresentations and concealment, courts of equity are reluctant to apply the rule at all, unless it appear that the rights of innocent third parties will be injuriously affected if that defence is overruled. Affairs of the complainant had become much complicated, and the evidence shows that the mutual releases were executed without his consent and against his wishes. He lost by the arrangement not only all claim to the possession or control of the property, but all direct means of consulting the books and papers containing the evidence of his rights. Looking at the circumstances of the case, I am clearly of the opinion that it is one where equity will apply that rule. (Provost vs. Gratz, 6 Wheat., 481; Michoula vs. Gerod, 4 How., 503; Baker vs. Wheeling, 3 Sum., 486; 2 Story Eq. Jur., sec. 15, 20.)

Details of the evidence have purposely been avoided, as the case is one, if the decree be for the complainant, which must go to a master, where further testimony may be taken as to amounts.

Conclusion of the court is that the complainant is entitled to a decree; that the release of March 2, 1853, given by the assignee to the respondent corporation, is void; and that the same be set aside as having been obtained by fraudulent representation and concealment; and also
324*i* to a decree for an account, including an account of all assigned and mortgaged property, subject to the payment of the debts, if any, due to the creditors of the assignor, as secured in the instrument of assignment, reserving all further orders or decrees as for other specific relief or otherwise, until the true state of the accounts is fully ascertained.

Decree accordingly, and the case must be referred to a master, to state the account for the consideration of the court.

For complainants: J. H. Parsons, T. A. Jenckes, Caleb Cushing.
For defendants: Abraham Payne, R. W. Greene.

324*j*

325 LUCINDA JAMES, ADMINISTRATRIX, *vs.* ATLANTIC DE LAINE COMPANY ET ALS. } Before Charles Hart, esq., master in chancery.

November term, 1867.

Decree.—Filed November 25, 1867.

This cause came on to be heard at this term of the court, and having been fully argued by counsel and considered by the court, it is thereupon ordered, adjudged, and decreed as follows, to wit:

First. That the instruments of release and settlement bearing date March 2d, A. D. 1863, and annexed to the original bill of complaint in this cause, marked respectively C and D, the first-named being executed by Lyman B. Frieze, assignee of Charles T. James, and the second by the Atlantic De Laine Company, by George W. Chapin, treasurer, and by Lyman B. Frieze, assignee of Charles T. James, are void, and are hereby adjudged and decreed to be set aside as having been obtained by fraudulent representations and concealments.

Second. That the said case be referred to Charles Hart, esq., as
326 master in chancery, to take an account of all the dealings between Charles T. James or Lyman B. Frieze, assignee of Charles T. James, and said Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer or trustee, or otherwise, including an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of settlement and release, or otherwise; subject, however, to the payment of the debts, if any, due to the creditors of said Charles T. James, as secured by his instrument of assignment; and that said master report to this court the true state of said accounts with all convenient speed.

Third. That all further orders and decrees in this case be reserved till the coming in of the report of said master.

Entered as the decree of this court, per order thereof, this twenty-fifth day of November, 1867.

HENRY PITMAN, *Clerk.*

EXHIBITS FILED WITH MASTER.

[A.]—*Filed February* 8, 1868.

The complainant in the above-named suit respectfully moves the master that he order the said defendants, within a time to be by him limited, to render, produce, and furnish before him, in accordance with the decree entered in said case November 25, 1867, an account from them of all the dealings between them, or either of them, and Charles T. James or L. B. Frieze, assignee of Charles T. James, including

an account of all the property of every kind and character originally held by Charles T. James, deceased, and which was by him assigned or mortgaged, and which passed or came into the hands, possession, or control of the Atlantic De Laine Company, or of George W. Chapin, treasurer thereof, or of George W. Chapin, trustee,
327 or otherwise, including particularly an account of the property conveyed by mortgage on the day of July, 1851, referred to on page 6 (six) of the printed copy of the bill in this suit, and also referred to on page 39 of the printed copy of the answer in said suit. And that said defendants shall, in furnishing said account, render a full, true, particular, and detailed statement of all the property of any and every kind which came or passed into their or his hands, possession, or control, under the mortgage aforesaid or under any subsequent mortgage or mortgages, or to which they obtained title, or of which they took or entered into the possession of under the instruments of release and settlement, of which copies are annexed to the bill of complaint in this suit, marked respectively C and D, bearing date March 2d, A. D. 1853, including particularly a full, true, particular, and detailed statement and account of all the shares of the capital stock of said Atlantic De Laine Company which were originally subscribed for, owned, and held by Charles T. James, deceased, and which were conveyed to George W. Chapin, treasurer, trustee, or otherwise, as mortgagee, by mortgage of July, 1851, or which passed into his hands, possession, or control as treasurer, trustee, mortgagee, or otherwise, or into the hands possession, or control of said company, by virtue, in any manner, of the instruments of release and settlement dated March 2d, 1853, marked respectively C and D, and appearing on pages 28, 29, 30, and 31 of the printed record in this suit, the value thereof, the income, dividends, whether declared or otherwise, or which might have been declared, profits or increase in value thereon during the several years and for each year from day of July, 1851, until the date of the decree in this suit, viz, November 25, 1867, and also an account of the value received, together with interest thereon, of all the property, independently of the stock aforesaid, which was conveyed by mortgage to said company, or to said George W. Chapin, treasurer thereof, or to George W. Chapin, trustee, or otherwise, under the mortgage dated July , 1851, or under any subsequent mortgage or mortgages; and also that said Atlantic De Laine Company and George W. Chapin, treasurer thereof, and
328 George W. Chapin, trustee, or otherwise, or in any other capacity, will render, produce, and furnish to and before the master a full, true, particular, and detailed statement and account of any and all other property of any and every kind and character which has at any time come or passed into their or his hands, possession, or control by mortgage, assignment, or otherwise, which was originally held by Charles T. James, deceased.

By her solicitor.

JAMES H. PARSONS.

[B.]—*Filed by complainant February* 21, 1868.

The complainant above named, in view of the statement made by the defendants, and appearing on the minutes of the master of the meeting held Saturday, February 8, 1868, that they would assent to an order for an account in accordance with the terms of the decree, hereby asks the master to make such order, said account to be filed within a time to be by him limited.

But in so moving she does not waive her right to call up the motion marked A, heretofore filed with the master, after the filing of said account, nor any of her other rights in the premises.

By her solicitor.

JAMES H. PARSONS.

Above motion granted, and respondents ordered to file an account in accordance with the second article of the decree on or before the 21st day of April next.

C. HART, *Master.*

Above order assented to by respondents.

C. HART, *Master.*

329 [C.]—*Filed by respondents February* 21, 1868.

The defendants move for an order upon the complainant to file an account, under the second article of the decree, on or before the 21st day of April, A. D. 1868.

By their solicitor.

A. PAYNE.

Respondents assent to the above on this 21st day of February, 1868, and order entered accordingly.

C. HART, *Master.*

[D.]—*Filed May* 5, 1868.

Atlantic De Laine Co. in account with estate of Charles T. James, deceased, Lucinda James, administratrix:

DR.

For amount of contract-price of building De Laine Mill, contract dated January 21, 1851, assumed by corporation Aug. 1, 1851	260,000 00
For work and materials furnished in addition to those called for by the contract, embracing the erection of large store-house, dye-house, repair-shop, blacksmith-shop, and a large amount of additional machinery, all of which are properly rendered	79,973 56
	339,973 56
To balance due	160,000 00
Interest on same to Nov. 26, 1867	
To 150 shares capital stock Atlantic De Laine Co., (at par value)	150,000 00
To dividends on same from Aug. 1st, 1851, to Nov. 26, 1867.	
To increased value of said shares during said period	
To amount received from sale of Warwick farm	
To amount received from sale of Scituate farm	
To amount received from Cannelton Co.'s notes	
To amount received from East Tennessee Mining and Manufacturing Co.'s stock	
To interest on value of last five items to Nov. 26th, 1867	

LUCINDA JAMES,
Administratrix.

330 CR.

By balance due Geo. W. Chapin, trustee, on mortgage, and interest Feb. 23, 1853	52,900	
Less proceeds of sale of homestead	9,850	42,350 00
By sundry drafts, at six months, paid C. T. James on account of contract		113,000 00
By items of account of De Laine Co. vs. L. B. Frieze, assignee, belonging to estate of C. T. James, Lucinda James, administratrix, to pay—say, about		24,500 00
Balance due C. T. James Feb. 23, 1853		160,000 00
		339,973 56

LUCINDA JAMES,
Administratrix.

PROVIDENCE, *May 5th*, 1868.—Then personally appeared Lucinda James, administratrix, and in her said capacity made oath that the foregoing account by her subscribed was a true and correct account, according to the best of her knowledge and belief.

Before me,

CHARLES HART, *Master.*

[E.]—*Filed May* 12, 1868.

The complainant respectfully moves the master for an order on said defendant corporation and Geo. W. Chapin to file their accounts, heretofore ordered by the master, with him within twenty-four hours.

By her solicitor,

JAMES H. PARSONS.

PROVIDENCE, *May 12th*, 1868.

331 [F.]—*Filed May* 14, 1868.

An account of all the dealings between Chas. T. James and the Atlantic De Laine Co. and Geo. W. Chapin, in his capacity as treasurer, trustee, or otherwise:

1851.				
Jan.	21.	For amount the following drafts paid him as 1st payment on contract:		
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	5,000	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos from date	5,000	
		G. W. C., atty., on Globe Printing Co., 4 mos. from date	5,000	
		G. W. C., atty., on Hill, Carpenter & Co., 1 d's sight	3,000	
		G. W. C., atty., on Chas. T. James, at sight	18,000	
				36,000 00
Feb.	15.	For amount the following drafts paid him as 2d payment on contract:		
		G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date	3,500	
		G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date	3,500	

G. W. C., atty., on Dodge, Tucker & Co., six mos. from date 3,500
G. W. C., atty., on Globe Printing Co., 5 mos. from date 3,500
G. W. C., atty., on Chas. T. James, at sight 22,000 36,000 00

March 15. For amount the following drafts paid him as 3d payment on contract:
G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date 3,500
G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date 2,500
G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date 3,000
G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date 2,500
332 March 15. G. W. C., atty., on Globe Printing Co., 6 mos. from date 2,500
G. W. C., atty., on Chas. T. James, at sight 22,000 36,000 00

April 15. For amount the following drafts paid him as 4th payment on contract:
G. W. C., atty., on Harrison & Co., 6 mos. from date 4,000
G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date 2,500
G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date 2,000
G. W. C., atty., on Hoyt & Tillinghast, 6 mos. from date 2,000
G. W. C., atty., on Globe Printing Co., 6 mos. from date 2,000
G. W. C., atty., on Dodge, Tucker & Co., 6 mos. from date 1,500
G. W. C., atty., on Chas. T. James, at sight 22,000 36,000 00

May 15. For amount the following drafts paid him as 5th payment on contract:
G. W. C., atty., on Hill, Carpenter & Co., 6 mos. from date 6,000
G. W. C., atty., on Hoyt & Tillinghast, 6. mos. from date 4,000
G. W. C., atty., on Hacker, Lea & Co., 6 mos. from date 4,500
G. W. C., atty., on Dodge, Tucker & Co.. 6 mos. from date 2,500
G. W. C., atty., on Globe Printing Co., 6 mos. from date 4,500
G. W. C., atty., on Harrison & Co., 6 mos. from date 3,500
G. W. C., atty., on Chas. T. James, at sight 11,000 36,000 00

June 12. For the following drafts paid him as 6th payment on contract:

	Our draft on Hoyt & Tillinghast, 6 mos. from 15th inst	3,000	
	Our draft on Harrison & Co., 6 mos. from 15th inst	1,000	
334 June	12. Our draft on Hacker, Lea & Co., 6 mos. from 15th inst	3,000	
	Our draft on Globe Printing Co., 6 mos. from 15th inst	3,000	
	Our draft on Day, Owen & Co., 6 mos. from 15th inst	2,000	
	Our draft on Hill, Carpenter & Co., 6 mos. from 15th inst	4,000	
	Our draft on Dodge, Tucker & Co., 6 mos. from 15th inst	2,000	
	Our draft on Chas. T. James, at sight.	18,000	
			36,000 00

July 2. For the following notes given him on account of final payment:

	Our note at 4 mos. from date	5,000	
	" " 4 " "	5,000	
	" " 4 " "	5,000	
			15,000 00

Dec. 31. For building various drains from mill 287 78

For coal used by engine in driving shafting, from Aug. 4th to Sept. 22d, '51, 42½ tons, as cash, Aug. 4th, 1851 ..... 198 90

For coal, used as above, from Sept. 22, '51, to Nov. 6, '51; 69½ tons, as cash, Jan. 30, '52 ..... 318 61

For a wrench in Providence Machine Co.'s bill, approved by A. R. Fisk, paid Dec. 11, '51 ..... 18 00

For a lap-apron, chgd. in G. & D. Taylor & Co.'s acct., approved by A. R. Fisk, paid Oct. 1, '51 20

535 71

For amt. labor paid Wilkinson, Wilbur, and Sargent and their hands, from July 28th to Aug. 16th 127 05

For amt. labor paid Wilkinson, Wilbur, and Sargent and their hands, from Aug. 16th to Sept. 13th, 1851. 364 18

For amt. labor paid Wilbur and Sargent and their hands, from Sept. 13th to Oct. 11th 374 00

For amt. labor paid Wilkinson, Wilbur, and Sargent and their hands, from Oct. 11th to Nov. 8th 402 08

335 Dec. 31. For amt. paid Wilbur and his hands, from Nov. 8th to Nov. 15th 42 71

For amt. labor paid Sargent and his hands, from Nov. 8th to Nov. 22d. 112 54

		For amt. labor paid Wilkinson and his hands, from Nov. 7th to Dec. 6th	114 25	
				1,536 81
1852.				
Jan.	1.	For amt. paid Bingham & Pierce, bill 78 wool-baskets		197 00
March	27.	For amt. paid Pierce & Luther, bill painting boxes	103 03	
		For amt. paid Lemuel Angell, collector, bill for tax assessed Aug., '51, in North Providence, on $75,000, with int	169 12	
				272 15
		Amount forward		233,829 45

1852.		DR.		
		Amount forward		233,829 45
April	24.	For paid Burr & Shaw's bill, hose and pipes		259 74
	29.	For paid Phenix Iron Foundry, bill for waste-gates, shafting, &c		59 48
May	28.	For paid Pierce & Luther, 3 bills of painting, of $62.63, $76.07, $117.30		256 00
	31.	For paid labor and materials used about engine and mill		720 84
June	10.	Paid Thurston, Greene & Co., bills various machines for mill		213 67
June	25.	Paid J. R. Brown, bill on watch-clock	44 00	
		Paid Pope & Cutter for fitting up do	31 00	
				75 00
	30.	For A. Dailey's bill in part	501 02	
		For articles of Brown & Barker, as by bill, cash, Aug. 6th, '52	173 41	
		For articles of A. Anthony & Co., as by bill, cash, June 30th, '52	78 00	
		For articles of N. A. Bradford & Co., as by bill, cash, March 13th, '52	95 86	
336 June	30.	For articles of W. Earle, as by bill, cash, June 30th, '52	23 91	
		For H. W. Slocum, as by bill of cash, May 22d, '52	32 76	
		For articles of James Eames, as by bill of cash	99 81	
		For articles of Rose & Farnum, as by bill of cash, June 30th '52	29 66	
		For articles of G. & D. Taylor & Co., as by bill of cash, Sept. 5th, '52	25 00	
		For articles of W. Coleman & Sons, as by bill of cash, June 30th, '52	5 60	
		For articles of Calder & Phillips, as bill of cash, June 30th, '52	73 76	
		For ½ amt. paid by us for horse-hire to April 25th, cash, March 31st, '52	149 26	
		For amt. in smithy, as by acct. rendered	531 08	

		For paid P. Mathewson, stone for engine, cash, May 14th		114 00	
		For paid A. & W. Sprague for blanketing, cash, June 30th, '52		5 00	
		For paid Wm. Hudson, traveling expenses, cash, June 30th, '52		11 30	
		For paid Lewin & Fisk, labor on partition for dressing-room, Feb. 15th, '52		19 50	
		For paid Mrs. Reynolds & Hargraves, making beam-cloths, May 8th		9 17	
		For paid Mrs. Richardson, board of engine-hands, May 8th		36 00	
		For paid A. R. Fisk, April 30th		75 00	
		For paid Franklin Mfg. Co., J. Waterman & Co., and D. Hunt, bill waste for cleaning machinery, Dec. 1st, '51		39 21	
		For paid Rice & Congdon, speeder-belting, Nov. 18th, 1851		6 00	
		For sundries of the following persons, approved by A. R. Fisk, Jan., 1852:			
		A. Anthony & Co., picker-leather, Aug. 12th, '51		8 47	
337	June	30. N. A. Eddy, 47 m. tacks	3 53		
		Tools and screws	3 29		
		Screws, files, and locks	3 51		
				10 33	
		S. A. Briggs, oil-drippers, Sept. 8th, '51—Feb. 23d, '52		63	
					2,153 74
		Amount forward			237,619 52

1852.		DR.			
		Amount forward			237,619 52
June	30.	Paid P. Grinnell & Sons, emery and files, Sept., 1851		1 93	
		Paid Wm. Earle, cotton duck, Oct. 1st, '51		9 00	
		For Prov. Machine Co.'s bill, settled April 6th, '52, less item of commission charged Feb. 24th, $111.72, and interest, $2.24 = $113.96; whole bill, $1,060.23, less $113.96		946 27	
		For C. & H. S. Pierce, bill baskets, Jan. 15th, '52		40 00	
		For Thurston, Greene & Co., bill tools for engine, June 9th, '52		213 67	
					1,210 80
		For Globe Printing Co., bills bagging used in covering steam-boiler			46 80
		Paid for insurance on mill and machinery, for $53,000 for 60 days from July 30th, '51, cash, Aug. 18th, '51		198 50	

		Paid for insurance on mill and machinery, for $72,000, from Sept. 30th, '51, to Feb. 1st, '52, at 1¼ per cent. per annum average, Oct. 25th, 1851	300 00	
				498 50
Oct.	8.	Paid N. A. Eddy, bill hardware		57 74
	16.	Paid A. H. Manchester's bill, force-pump		122 94
Nov.	22.	Paid Amoskeag Manfg. Co., bill sundries		597 92
	30.	Paid freight, plank from Boston		3 00
338	Dec. 31.	Paid D. C. Murdock, bill drop-wire, box, &c.	58 00	
		Paid Howard & Davis, bill clock and scales	64 00	
				122 00
		For sundries in Wm. Mason & Co.'s bill, cash March 31st, '52		802 07
		For Thurston, Greene & Co.'s bill, labor, and materials on engine		3,614 88
		For paid labor, lumber, brick, tools, &c		1,967 27
		For sundry items in Prov. S. & G. P. Co.'s bills for articles used in fitting up roller-room		80 92
		For Prov. S. & G. P. Co.'s bill for labor, &c., at mill, from March 22d to May 22d, '52		253 04
1853.				
Jan.	29.	For paid Lewin, Kenyon & Co.'s bill, work on engine		382 39
Feb.	4.	For amt. Thurston, Gardner & Co.'s bill for boiler, cash		3,243 14
March	15.	For paid Edward Smith, for his bills mule-regulator		340 00
	20.	For Calder & Phillips, bill labor, &c		122 82
	21.	For paid Prov. S. & G. P. Co.'s bill of March 6th, '52, for labor and supplies furnished for mill		666 54
	30.	For paid D. E. Carpenter, bill for carrying boiler to mill		99 67
		For interest charged		12,732 82
		Balance this account transferred to acct. L. B. Frieze, assignee		13,098 98
				277,683 83

CREDIT.

1851.				
Dec.	31.	By amt. paid Geo. N. Young, for 26 days as engineer, at 7s., Aug. 25th, 1851	30 92	
		By amt. paid John Lynch, for 18 days' work as engineer, at 7s., Aug. 25th, '51	21 00	
339	Dec. 31.	By 1,754 lbs. coal, at $6 per ton, Sept. 6th, '51	5 25	
		By bricks and mortar furnished for oven in Sampson house	14 60	
		For sundries paid by him at mill for labor and materials, as by bill, viz: Labor and materials on store-house.	1,323 22	

	Labor and materials on dye-house...	580 05	
	Lumber and mortar on coal-shed....	72 00	
	Material and labor on Place house..	41 29	
	Labor excavating extra for office cellar	44 00	
	Material for privy.....	9 34	
	Labor grading and leveling round mill.....	510 18	
	Labor and material for cassimere department.....	172 18	
			2,833 03
1852.			
June 30.	By paid by him to P. P. Kimball Sept. 19th, '51.....	15 00	
	By paid by him to wool-packers Sept. 24th, '51.....	24 00	
	By paid by him for A. Winsor's bill Aug. 8th, '51.....	29 48	
			68 48
	By amt. Thurston, Greene & Co.'s bill, tools for engine, charged June 30th, 52, the same having been previously charged in acct., cash, June 9th, '51.....		213 67
1853.			
March 2.	By amt. Chas. T. James' acct. building Atlantic De Laine Mill, charged construction account.		260,000 00
	For balance interest on this account to date...		14,568 85
			277,683 83

The defendants claim damages for the breach and non-performance of the contract for building the mill by Charles T. James.

The amount of such damages should be added to the charges in the amount herewith filed.

340 This amount, being unliquidated, must be ascertained by the master upon the proofs to be submitted to him.

It has already been estimated by them at not less than $50,000.

The above account is made out from the books, and is the same which has heretofore been proved in the case, but the defendants reserve the right to correct errors, especially in the interest account, if any there be.

George W. Chapin in account with Charles T. James, showing balance on mortgage account at date of settlement:

1851.			
Aug. 1.	To bills receivable, due Feb. 4th, '52.....		50,000 00
	" cash		25,000 00
1852.			
Sept. 30.	" copying sundry papers and telegrams		7 75
Dec. 22.	" Tillinghast & Bradley's bill		75 00
1853.			
March.	" drawing and recording sundry papers.....		12 81
	" Ames & Payne's bill		647 71
	" sundry telegrams and expenses.....		7 91
	" balance of interest		5,319 94
			81,098 12

1852. CR.

April	10.	By received of A. B. Dike, for stock on farm...	1,320 26
Aug.	3.	" " " " " " Warwick farm ..	5,786 79
Oct.	11.	" " for Cannelton-mortgage note.....	21,000 00
1853.			
March.		" " " Homestead estate	9,850 00
		" " of A. B. Dike, for stock on farm, less	
		Charges	48 49
		By amount due, carried forward.....	43,092 58
			81,098 12

1853. DR.

March	2.	For amount due this date.....	43,092 58

GEO. W. CHAPIN, *Treasurer.*

The foregoing account subscribed and sworn to before me on the 14th day of May, A. D. 1868.

CHARLES HART, *Master.*

341 [G.]—*Filed May* 14, 1868.

An account of all the dealings between Lyman B. Frieze, assignee of Chas. T. James, and the Atlantic De Laine Co. and Geo. W. Chapin, in his capacity as treasurer, trustee, or otherwise:

1851.

Oct.	11.	For our note at 4 mos. from date, favor Thurston, Greene & Co., for machinery furnished Chas T. James	3,000 00
	14.	For our note at 4 mos. from date, favor Carpenter & Vermilye, for amount their judgment, and interest on same, against Chas. T. James, for	2,611 93
	14.	For our note at 4 mos. from date, favor Hoyt & Tillinghast, for amount cost in above judgment	184 47
	15.	Our note at 6 mos. from date, favor Hoyt & Tillinghast, for amount duties, expenses, and interest on English machinery for Chas. T. James.....	1,273 19
	16.	For our note at 4 mos. from date, favor Evarts & Co., for amount their claim for duties and expenses paid on English machinery for Charles T. James	1,600 00
	18.	For amount our draft this date on Hacker, Lea & Co., at 6 mos. from 23d inst., remitted them in payment of their account moneys borrowed by him, and interest on same.....	2,244 80
	31.	Paid schooner Star, bill freight.....13	28 32
		" W. R. R. " " 14	69 64
		" Boston & Prov. R. R., bill freight.....16	6 39
		" Pierce & Luther, by order C. T. James..25	1,000 00
		" Boston & Prov. R. R., freight-bill.....28	144 34
		" freight-bills 30	13 27
		" sloop Frederic Brown, bill freight.....	62 28
		" Boston & Prov. R. R., " " 31	46 22

Nov.	12.	For our note to Thurston, Greene & Co., at 4 mos. from 12th inst., for their bill stock and work..	2,182	26
	12.	For our note to Albert Dailey, at 4 mos. from Oct. 7th, for his bill lumber	498	45
342				
Nov.	15.	For our 3 notes to Bancroft & Sellers, at 4 mos. from 1st inst., of $500 each, for machinery, payable at office of Hacker, Lea & Co.....	1,500	00
		For our 2 notes to Bancroft & Sellers, at 4 mos. from date, for $500 and $434.15, for machinery, payable at office of Hacker, Lea & Co.....	934	15
		For our note to Ray Clapp, at 4 mos. from date, for balance bill fence.....	224	90
	15.	For interest and expenses on our 3 drafts of $5,500 each, of 3d inst., on Hacker, Lea & Co., Hoyt & Tillinghast, and Dodge, Tucker & Co., as by his receipt of 3d inst	852	90
	22.	For our note to Hill, Carpenter & Co., at 6 mos. from Aug. 1st, for amount Amoskeag Co. bill, machinery and interest.....	4,136	55
	26.	For insurance and drayage machinery in New York, paid by H. & T.....	17	75
	29.	Paid your order to Ray Clapp 1	75	00
		" Geo. H. Wilbur, bill transportation, 12th..14	72	03
		" John H. Potter, for 1 doubler.....15	140	00
		" Ray Clapp, by order	120	00
		" Boston & Prov. R. R. Co., bills freight..20	123	92
		" R. Waterman, in full.....22	19	00
		" Ray Clapp, by order 29	50	00
Dec.	3.	For our note at 4 mos. from 2d inst., to Thurston, Greene & Co., for their bill stock and work ...	1,639	25
	26.	For our note at 6 mos. from date, to Thurston, Greene & Co., for their bill stock and work, payable in Boston.....	2,007	21
	31.	Paid Lewin & Fisk, bill labor, &c.....12	497	05
		" Geo. H. Wilbur, bill transportation.....15	29	47
		" sundry R. R. freight-bills	137	52
		" Ray Clapp, balance bill of columns.....19	74	88
		" Martin A. Snow, bill labor at mill	94	17
		" B. Williams, bill stone block.....20	6	50
		" Lewis & Dempster, bill plastering engine-room and office.....	250	00
		" Peirce & Luther, on account.....	100	00
		" S. C. Coombs & Co., bill lathes.....	112	00
		" Burr & Shaw, bill hose and pipes 22	226	87
		" Albert Dailey's bill lumber for columns ..	94	12
343				
Dec.	31.	Paid N. A. Eddy, bill hardware.....	142	25
		" Lewin & Fisk, bill labor.....24	288	66
		" B. Williams, bill block	6	50
		" sundry telegrams	6	11
		" Geo. W. Chapin, traveling expenses, &c., as per bill.....	2869	
		For part Albert Dailey's bill, lumber used at the mill, as by his approval, on file.....	432	10
		For Galen Spare's bill, ladders, paid Oct. 10, '51..	105	58

		" sundries in Barker & Whitaker's acct., on file	231 69
		" " in E. P. Mason & Co.'s acct., on file	3 08
		" " in A. Lyon's acct., on file	3 00
		" " in Geo. H. Whitney's acct., on file	1 00
	31.	For amount paid by Hacker, Lea & Co. for Jos. Lea's traveling expenses in October	110 93
		For labor paid for him at the mill for 4 weeks ending Nov. 8th, cash, Nov. 14, '51	695 13
		For labor paid for him at the mill for 4 weeks ending Dec. 6th, cash, Dec. 12, '51	1,328 69
		For labor paid for him at the mill from Dec. 6th to date	631 72
1852.			
Jan.	1.	Paid his order favor Bridgham & Peirce	250 00
	2.	" Geo. H. Wilbur's bill, transportation	28 53
		" sundry freight-bills	30 36
	7.	" his order, favor N. G. Thom	30 00
	9.	" Russell Millard, bill covering rolls	173 01
		" Lewin & Fisk, bill labor	237 30
	10.	" John Burns' bill springing windows	77 57
		" Hill, Carpenter & Co., for interest and expenses on 2 notes of $2,500 each, as per memo. on file	269 46
	24.	Paid his order, favor Peirce & Luther	100 00
	31.	For cash paid labor his men at mill	90 36
		For acceptance of his draft at 4 mos. from 1st inst., favor of John Kendrick	291 00
		For acceptance of his draft at 4 mos. from 14th inst., favor John Kendrick 14	300 00
		For acceptance of his draft at 4 mos. from 23d inst., favor John Kendrick 23	350 00
		For acceptance of his draft at 60 days from 24th inst., favor Peirce & Luther 27	200 00
344	Jan. 31.	For our note at 4 mos. from 16th inst., favor Calder & Phillips 16	322 69
		For our note at 6 mos. from 27th inst., favor Thurston, Greene & Co 27	1,360 05
		For our note at 6 mos. from 30th inst., favor Prov. Steam and Gas Pipe Co 30	1,399 30
		For our note at 4 mos. from 31st inst., favor Prov. Machine Co 31	712 94
Feb.	2.	Paid Globe Printing Co. bill for drawing various papers	23 46
	7.	Paid Geo. H. Wilbur's bill, transportation	59 39
	9.	" sundry freight-bills	289 95
		" Lewin & Fisk, bill labor at mill	373 84
	14.	For our note at 2 mos. from 13th inst., to S. J. Watson & Co., for their bill stock and work	623 69
		For labor, his men at mill, 4 weeks ending Jan. 31st, as cash 6th inst	743 65
	23.	Paid S. A. Briggs' bill tin-work	104 20
March	13.	For our note at 6 mos. from 12th inst., favor Thurston, Greene & Co., for their bill stock and work	1,171 63
		Paid sundry freight-bills, 10	236 75
		" Geo. H. Wilbur's bill, transportation	76 15
		" W. G. White, paints and painting machinery	73 51

	27.	For our note 6 mos. from 21st	$900 00	
		" " " 6 " " 21st	962 82	
		to O. Mason & Co., for bill belting &c		1,862 84
	31.	Paid W. W. Arnold & Son, bill glazing 25		10 20
		" Josephus Baldwin, bill shuttles.....30		58 67
April	2.	Paid Bicknall & Skinner, bill grindstones		13 44
	3.	" Lewin & Fisk, bill boxes, &c		430 00
	10.	For our note 6 mos. from 6th inst., favor Prov. Steam and Gas Pipe Co.....		1,500 00
	23.	Paid Peirce & Luther, by your order		59 70
	27.	For our acceptance his draft favor John Kendrick, 4 mos. from date		300 00
	30.	For cash paid sundry persons for making loom-aprons, cash, Feb. 6th		56 95
		For cash paid his laborers at mill, 4 weeks ending Feb. 28th, cash, March 5th		513 67
		For cash paid his laborers at mill, 4 weeks ending March 27th, cash, April 2d		351 15
345	April 30.	For cash paid James H. Bicknall at mill April 7th		138 33
May	12.	For our note at 4 mos. from date, to Thurston, Greene & Co., for their bill machinery and work		990 62
	27.	Paid J. A. Gowdey & Son, bill reeds.		489 12
		" Spooner & Draper, bill burlaps, &c		49 53
	29.	" A. Burgess & Son, bill pickers.....		154 06
June	10.	" his order favor A. R. Fisk.....		100 00
	15.	For amount Albert Dailey's bill, lumber, &c., on this account		141 84
	21.	Paid Fales & Jenks for pump		140 00
	25.	" his order favor L. B. Frieze		112 50
	30.	" James Eames' bill tin-ware.....		171 07
		" Mrs. Richardson, Feb. 6, '52		119 50
		For the following amounts, sundries not previously charged, approved by him Jan. 27, 1852 —cash Dec. 31st, 1851:		
		J. A. Gowdey & Son, 12 reeds, Oct. 21, '51.....		8 29
		Samuel A. Briggs, oil-drops, &c., Oct., '51		7 99
		P. Grinnell & Son, sundries, Nov., '51.....		25 61
		N. H. Bradford, tubs and baskets, Dec., '51.....		11 50
		H. W. Slocum, walnut and lumber, Dec. '51		2 46
		Manchester & Hopkins, stone and cement		7 19
		Phenix Iron Foundry, iron sinks, Dec., '51.....		17 90
		A. Anthony & Co., lacing and tallow, Oct., '51 ..		10 61
		Wm. Earle, lines, Dec., '51		2 62
		Spooner & Draper, burlaps and ticks, Nov., '51..		49 53
		N. A. Eddy, rope and screws, Oct., '51		4 71
		For balance of interest in account to date		766 06
	31.	For sundries in Wm. Mason & Co.'s bill—cash March 1, 1853.....		637 93
	31.	For W. B. Greene's expenses to Boston in Oct., '51		22 96
		For balance of interest in account to date		1,560 47
				$53,314 77

1852.				
Dec. 31.	For balance of account due this date		53,314 77	
1853.				
March .	For H. N. Hooper's bill bell	579 50		
	" balance of interest account	945 59		
	By C T. James' contract account			13,098 98
	" balance acct. carried forward			41,740 88
			$54,839 86	$54,839 86
	For balance of account	41,740 88		

346 Statement of the condition of the Atlantic De Laine Co., rendered to Lyman B. Frieze, assignee of Charles T. James, at his request, during the dealing between them:

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
" various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CREDIT.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
" " sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
Delaines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

I would state our directors estimate that $50,000 or more of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

(Signed) GEO. W. CHAPIN, *Treasurer.*

PROVIDENCE, *Feb.* 26, 1853.

GEO. W. CHAPIN, *Treasurer.*

The within and foregoing account subscribed and sworn to before me on this 14th day of May, A. D. 1868.

CHARLES HART, *Master.*

347 [H.]—*Filed May* 14, 1868.

An account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, and which passed or came into the hands of said Atlantic De Laine Co., or Geo. W. Chapin, as treasurer, or trustee, or otherwise:

Mortgage of his homestead in city of Providence .....
" " " Warwick farm .....
" " " Scituate " .....

" " " interest in stock of Atlantic De Laine Co.
Notes on Cannelton Manufacturing Co. for $50,000.....
1,000 shares East Tennessee Mining and Manufacturing Co.

Amount realized on the above:

From mortgage on homestead.....		$9,753 49
" " " Warwick farm		7,252 05
" " " Scituate " nothing		
" Cannelton Manufacturing Co.'s notes		21,000 00
" stock in East Tennessee Mining and Mfg. Co., nothing		
		$38,005 54
Less interest due on account	$5,319 94	
" sundry expenses, as per account	778 18	
		6,098 12
		$31,907 42

Also 113 shares of stock of the Atlantic De Laine Co.

GEO. W. CHAPIN, *Treasurer.*

The foregoing account subscribed and sworn to before me this 14th day of May, 1868.

CHARLES HART, *Master.*

348 [I.]—*Filed May* 19, 1868.

The complainant objects to the accounts filed by the said defendants as incomplete, imperfect, and insufficient, and as not in accordance with the decree of the court entered November 25th, 1867. And she renews the motion filed by her on the day of February, A. D. 1868, marked "A," which was temporarily withdrawn by her on the order made by the master, with the assent of the defendants, that they file an account in accordance with the terms of the decree. And she respectfully asks that said motion be granted and the order therein asked for be made.

By her solicitor.

JAMES H. PARSONS.

MAY 19TH, 1868.

In the matter of the motion marked "I," filed by complainant May 19th, 1868—

The master sustains the exceptions of the complainant to the accounts filed by respondents, marked "F, G, and H," and orders respondents to file accounts brought down to date of decree and in accordance with motion filed by complainant Feb. 8th, 1868, and marked "A."

Above order entered June 3, 1868.

C. H., *Master.*

[J.]—*Filed by respondents June* 26, 1868.

The undersigned, George W. Chapin, treasurer of the defendant corporation, in compliance with the order of the master to file additional accounts in compliance with the terms of the motion marked "A," and filed by the complainant in this case, submits that he understands that the accounts already filed are a full compliance with the terms of the motion marked "A," except the interest account, which is a mere matter of computation.

349 And the account called for of the value of the shares of the capital stock of said company, claimed by said James, the income and dividends, whether declared or otherwise, or which might have been declared, profits or increase in value thereon during the several years and for each year, from the day of 1851, until the date of the decree in this suit, November 25th, 1867.

And avers in relation to the said shares of the capital stock that the said defendant corporation has never declared any dividends upon any of the shares of its capital stock, that it has no surplus from which to declare dividends, that the property of said company consists of real estate, machinery, stock unmanufactured and in process of manufacture, and goods, of which property the said shares of capital stock claimed by said James are entitled to their aliquot share or proportion, after payment of the debts of said company, and any claims of said company upon said shares.

And he respectfully submits that no other or further account of said shares of capital stock can be lawfully called for by the complainant in this cause.

And he respectfully asks the master, before requiring any other or further account of said shares of capital stock from the defendants, to apply to the court for instruction in the premises.

GEO. W. CHAPIN, *Treasurer.*

Subscribed and sworn to before me on this 26th day of June, 1868.

CHARLES HART, *Master.*

A. PAYNE,
R. W. GREENE,
B. R. CURTIS,
Of Counsel.

350 [K.]—*Filed by complainant June* 27, 1868.

The complainant in the above-entitled suit excepts and objects to the paper filed by George W. Chapin, treasurer, in pretended compliance with the order of the master made on the 3d day of June, 1868—

First. Because the same contains no account of any kind or character from George W. Chapin, trustee and mortgagee, either in compliance with the order of the master, the terms of the decree, the motion marked I, or the motion marked A, and the order of the master made thereon.

Second. Because said Chapin, neither as trustee, mortgagee, treasurer, or otherwise, or in any capacity whatever, has rendered any account, of any kind or character, in accordance with the terms of the decree and order of the master, of the value of the property mortgaged or assigned by the late Charles T. James.

Third. Because said paper, while admitting and distinctly stating that said complainant is entitled to an aliquot share or proportion of the property of said company, does not state what is the value of the said property, in what its real estate consists, when the same was purchased and for what consideration, nor does the same state in what the machinery consists, the value thereof, when the same was purchased and for what price, nor does the same state what amount of goods have been manufactured by said company from the date of the instruments of release and settlement of March 3d, 1853, which the court, by its opinion and decree, have declared void for fraud, misrepresentation, and concealment, nor the price for which the same have been sold, nor of the profits made by said sales, nor of the increase in value of the property

of said company and of the shares of the capital stock therein, from the date of said void settlements to the date of said decree, to wit, November 25th, 1867, as required by the master's order.

351 Fourth. Because neither the accounts already filed nor the paper submitted by George W. Chapin, treasurer, contain any account from said Chapin, trustee and mortgagee of the property assigned and mortgaged by Charles T. James, after the date of the void settlements of March 3d, 1853.

Fifth. Because the said paper is an argumentative refusal on the part of said Chapin, as treasurer of said corporation, to comply with the order of the master in the premises.

Sixth. Because the said paper is in open and deliberate contempt of the order of the master made on the 3d day of June, A. D. 1868, and is a refusal to comply with said order, and is a statement made in defiance of said order.

Wherefore the said complainant respectfully moves the master for an absolute and peremptory order on said George W. Chapin, trustee and mortgagee, and on said Atlantic De Laine Company, for a full, direct, true, and perfect account, to be rendered under oath, in compliance with the motions marked respectively "A" and "I," and with the order of the master thereon, made on the 3d day of June, A. D. 1868.

By her solicitor, JAMES H. PARSONS.

PROVIDENCE, *June* 26, 1868.

[L.]

In compliance with the order of the master, the respondents submit the following account:

And in connection therewith, and preliminary thereto, the following state of facts:

In the latter part of the year 1850, the building of a mill for the manufacture of mousseline de laines, near the city of Providence, was entertained by Hoyt, Tillinghast & Co. of New York, Dodge, Tucker & Co. of Boston, and other leading firms in Baltimore, Philadelphia, Providence, and Hartford. A subscription was started for a capital

352 of $300,000, of which Charles T. James subscribed for $150,000.

On the first day of January, A. D. 1851, they entered into a contract, by George W. Chapin, trustee and attorney, with the said Charles T. James, the original plaintiff in the bill, to build a mill and furnish machinery for the same for the manufacture of de laines, which agreement is annexed to the plaintiff's bill, marked B. (Printed record, page 25.)

At and before the time, when said contract was made with said James, it was also agreed that they should apply to the general assembly of Rhode Island and obtain a charter of incorporation for the greater convenience of carrying on this business; and at the general assembly A. D. 1851 they applied for the charter, which was granted at the May session, 1851. The company was organized under this charter, and James was elected one of the directors, but they did not comply, and never have complied, with the provisions of the law of Rhode Island in order to exempt the stockholders from individual liability for the debts of the corporation, and the stockholders for this reason were and are liable for the debts of the corporation.

By this contract James agrees to have the mill and machinery ready for operation August 1st, A. D. 1851. (See contract, printed record, p. 25.)

The building of the mill was so far advanced in the month of June

1851, as to receive therein a little shafting and a part of the cotton and woolen cards.

The first piece of de laine was made on the 22d day of December, 1851, but it was the first of March, 1852, before all the looms were running, and not till the 17th of April were all the mules in operation.

Soon after this they were much interrupted by the irregular working of the steam-engine, causing frequent stopping of the machinery, sometimes only half an hour, at other times a whole day was lost. These delays became so frequent in the autumn of 1852, that the mill was stopped entirely for five weeks in November and December to repair the engines, they having been declared by the makers unsafe to be
353 operated any longer. The repairs were effectual for only a short time, the engine again breaking down on the 10th of February, 1852, requiring a week to repair, stopping the mill entirely.

At that time it was customary for de-laine manufacturers to buy wool largely in the West, at shearing times, for their consumption during the year. They were obliged to do this to get the quantity needed. In May, 1852, the question of their buying wool at the West was agitated by the company, and Gen. James was consulted as to the certainty of the mill being completed by the first of August, the time agreed upon in the contract. He was very positive that he would have the mill completed by the first of August, and showed them the buildings nearly completed, and assured them the machinery was in an equal state of completion, and urged the buying of a large supply of wool. The company bought a large supply of wool, being induced to do so by the assurance of James that the mill would be completed by the first day of August, according to contract. Owing to the delay in starting the mill the company was obliged to sell much of said wool at prices considerably below cost. The year 1851, and particularly the autumn, was one of the most profitable seasons ever known by de-laine manufacturers, all of which was lost to this company by their inability to produce de laines. In 1852, and for several years after, the business was very unprofitable, there being a large excess of production over consumptive demand. An extra price was allowed Gen. James for his contract to complete the mill for operation at the time named. The loss was a heavy one, and was frequently spoken of by Mr. Carpenter and other members of the company.

Early in the autumn of 1851, and before the time when the company agreed with the assignee of Gen. James to advance him funds to enable him to go on with his contract to build the mill, he, the said assignee, knew of this claim, and it was frequently spoken of in the conversations between him and the treasurer of the company. When he was furnished with a statement of the affairs of the company this was one of the items.

By the terms of the contract, thirty-six thousand dollars were to be advanced to said James on the 15th of each month, for
354 six months, January, February, March, April, May, and June, making in all $216,000. These advances were paid on the 15th of each month by drafts drawn by the treasurer, George W. Chapin, on each stockholder for his share of the advance like the other stockholders. The balance of $44,000 was to be paid on the first day of August, A. D. 1851, when the mill was to be completed by the terms of the contract.

On the 2d of July, 1851, James applied to the De Laine Company for an advance of $15,000 on account of the final payment of $44,000. This advance was made upon his assurances that the amount was necessary to complete the mill, and that the money should be applied to that

purpose. Afterwards he applied for a further advance of $15,000, which was not made to him.

On the 28th day of July, 1851, James applied for a loan of $75,000. The following is a copy of the letter containing the application:

GEORGE W. CHAPIN, Esq., *Treasurer A. D. Mill:*

DEAR SIR: A combination of circumstances compels me to lay the following before you, viz: I must have in some form, and at an early day, $75,000, for six, eight, and twelve months, to enable me to go on with my contract, otherwise I may be compelled to stop until such time as my affairs can be satisfactorily arranged. It is not for the want of property that compels me to make this request, but it is the want of money. It is in the power of the company, and for their interest, to render me immediate assistance at this time. A definite answer is respectfully requested at the earliest possible moment.

Truly yours,

CHARLES T. JAMES.

PROVIDENCE, *July 28th*, 1851.

James represented his necessities for an immediate loan to be so great that he could not wait until a meeting of the corporation could be called, in conformity to the by-laws, which required six days' notice of all special meetings.

The treasurer notified the stockholders, and they met at Provi-
355 dence informally. As prompt action was desired, and as the corporation could only act at a meeting duly called, according to the by-laws, after six days' notice, the stockholders, after hearing the statement of General James, and considering the matter, decided to make a loan of seventy-five thousand dollars to him in the proportion in which they held the stock in the company. This loan was made by all the parties except by Day, Owen & Co., who had subscribed for only three shares, and were not notified, on account of their small interest. Harrison & Co. did not take part in the loan, as they were financially in trouble. The negotiations were conducted by Messrs. Hoyt, Lea, Carpenter, Joshua Chapin, and George W. Chapin.

The substance of the circumstances consisted in the fact that General James represented that he must have the loan to enable him to go on with his contract, and that a large portion of it should go directly to parties furnishing machinery for the mill, which was then ready for delivery and detained for want of payment; also that if the loan was made the contract should be completed, let what would happen.

The company had advanced James over $100,000 more than the buildings and machinery therein were supposed by them to be worth. If James had failed, as he would have done unless assisted, the company would have been obliged to furnish the rest of the machinery themselves. The terms and conditions of this loan were in writing, of which a copy is in printed record, marked "E," p. 276.

The money was advanced by the stockholders, and their notes for the fifty thousand dollars given as provided in said agreement. This loan of money and notes was made by the stockholders upon faith in James' assurances that this money and the proceeds of the notes should be applied to enable him to complete the mill, and would be sufficient for that purpose. James received the money upon the notes by having them discounted.

On the second of September following the date of this loan James

made an assignment to Lyman B. Frieze of all his property in trust for his creditors. This assignment contains the following clause:

"And whereas I, the said Charles T. James, am under contract
356 with the said Atlantic De Laine Company to complete this new mill in said Olneyville and get the same ready for operation, reference to my said contract with them being had for terms thereof; and whereas said contract has been by me mostly completed, and requires only a small expenditure to entitle me to receive from said company all the sums of money stipulated to be paid by them to me by said contract, deeming it best for my creditors and all interested that my said assignee should proceed and complete said contract with said De Laine Company according to my said contract, and hereby empower him to go on and complete said contract with said De Laine Company, according to my said contract, and hereby empower him to complete all such contracts and to do all acts and things requisite for the completing of my contract with said De Laine Company, and to appropriate therefor out of the assigned property so much only as may be necessary to complete what now remains to be done or completed of said contracts, and no more; hereby excluding any appropriation of any of said property under this clause for purposes of paying only balances or debts due from me on said contracts, and restricting such appropriations to paying for work hereafter to be done and for machinery and materials hereafter to be delivered for the above purpose."

Frieze had no available assets of any value under the assignment of James, and so informed the De Laine Company, and requested them to advance to enable him to complete the mill.

The De Laine Company agreed to make the advance necessary to complete the mill, as this was the only means by which the mill could be completed.

The following is a copy of the power given by Frieze to Chapin, authorizing the De Laine Company to make the advances necessary to complete the mill:

"Whereas Charles T. James, of Providence, by his deed dated September 2d, A. D. 1851, voluntarily assigned all his property, real and personal, to me in trust for the benefit of his creditors, and therein, as his first appropriation for their benefit, authorized, empowered, and required me, as his assignee aforesaid, to go on and complete his contract
with the Atlantic De Laine Company, for the completion of their
357 new mill in Olneyville, and getting the same in operation, and to complete all such contracts, and to do all acts and things requisite for the completing of said contract with said Atlantic De Laine Company, and to appropriate therefor out of the assigned property so much as might be necessary to complete what then remained to be done and completed of said contracts, restricting such appropriations to paying for work hereafter to be done and for machinery and materials hereafter to be delivered for the above purpose;

"And, whereas, the time limited in said contracts for the completion thereof hath long since elapsed, and the same remains unperformed and incomplete, to the loss and injury of said Atlantic De Laine Company, and moneys cannot be raised by me in time for the due completion of said contracts without sacrifice and embarrassment to the assigned estate:

"Now, know all men by these presents, that I, Lyman B. Frieze, assignee as aforesaid, do hereby request, authorize, and empower the said Atlantic De Laine Company to pay and advance all sums of money to whomsoever the same may be due or become due for the completion

of the contracts aforesaid, the said company first obtaining my written consent to such payment, as evidence that the same is embraced within the clause of said assignment aforementioned; and in consideration of such payments and advances to be by them made, I hereby, in my said capacity, covenant and agree with said Atlantic De Laine Company to repay and re-imburse them all such payments and advances by them as aforesaid made, with interest, out of the first moneys by me realized from said assigned estate, in compliance with the spirit and terms of said deed of assignment as aforesaid.

In witness whereof, I have hereunto set my hand and seal this day of October, A. D. 1851.

"L. B. FRIEZE, *Assignee.*

"WM. H. PARKHURST."

Under this power, Mr. Chapin, the treasurer of the De Laine Company, advanced the sum of $54,839.86, for the completion of the mill.

Alfred A. Fiske, the son-in-law of James, and under James and
358 his assignee, in October, 1851, took charge of the superintending of the completion of the mill, and continued in this employment until the latter part of April, A. D. 1852. The advances made by the De Laine Company for the completion of the mill were charged to the account of Frieze, the assignee, by the De Laine Company under the agreement aforesaid.

All bills which Frieze did not fully understand were by him referred to Fiske, and on his approving them were certified by Frieze, and were then paid by the De Laine Company and charged to the account of Frieze, as assignee.

In this manner, all the advances made by the De Laine Company for the completion of the mill were made and charged to Frieze, as assignee.

Fiske was acting for Frieze at the De Laine Mill, superintending the completion of the contract, and also acting in his own behalf, he being a party to the contract, in connection with James, for building the mill.

No machinery not required by the contract was furnished by James or his assignee. The mill was completed in the spring of 1852.

In April, 1852, James made a proposition to the De Laine Company for settlement, which was as follows:

DEAR SIR: I propose to pay you, as trustee, $75,000, as treasurer, for money advanced, $25,000. Condition first, that the mortgage be discharged. Second, that all the property in the company in which I have any interest be discharged. Third, that whatever sum, after a full and satisfactory settlement between the company and me, be found due from me to said company, shall be paid by my individual notes in two equal payments of one and two years.

CHARLES T. JAMES.

GEORGE W. CHAPIN.
NEW YORK, *April 10th*, 1852.

This proposition the Atlantic De Laine Company declined to accept. James was hopelessly insolvent; his debts amounting to between six and seven hundred thousand dollars, and no property in the hands of his assignee to pay with, and no security offered for the payment of the notes for one and two years.

359 On the 12th day of June, 1852, the Atlantic De Laine Company

and James entered into an agreement of reference, of which a copy is in printed record, marked "G," pages 278, 279, 280.

The referees declined to serve.

The treasurer knew nothing in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his interest in the property of the Atlantic De Laine Company. James never called upon the treasurer with any person or persons, and requested a statement of the affairs of the company or of their accounts, or accounts of the company with him or his estate, nor did he alone ever ask for such accounts or express any curiosity to know the condition of said accounts. No such statement was ever refused to James by the treasurer, or by any one to his knowledge.

On the 14th of September, 1852, Chapin notified Frieze that unless an arrangement was made by which the parties for whom Chapin acted as treasurer should receive their money, he should proceed to sell under the mortgages. Chapin had some interviews with Mr. Frieze, and Gen. James strongly opposed the sale, urging many reasons why it should not be made, and stated that if it was attempted, he should get an injunction.

After Chapin had consulted with the parties interested, he delayed the advertisement of the property for sale until the February following. When it was advertised, an injunction was prayed for as stated in the bill.

The advertisement was made in accordance with the power contained in the mortgages, and was not in violation of any assurance, understanding, or agreement whatever. Nor did Gen. James or his assignee, at the time of the advertisement, or at any other time, pretend that the sale was in violation of any understanding, assurance, or agreement. Nor did Chapin ever hear from any source of any such assurance, understanding, or agreement, until after the filing of the bill. Some days after the property was advertised for sale by Chapin, Mr. N. F. Potter called on him and tendered a sum of money and requested Chapin
360 to transfer the mortgages which he held to him, said Potter. Chapin offered to receive the money and cancel the mortgages, but by advice of counsel he declined to transfer them to Potter.

On the 5th day of February, 1853, Chapin, as trustee, advertised James' stock in said De Laine Mill to be sold on the 26th day of February, 1853, and the other property, embraced by the said mortgages, to be sold on the 25th day of February, 1853.

This proceeding was had under the power contained in said mortgage, under the following circumstances: James had failed, and made his assignment, and his assignee had no available assets to pay the mortgage, and the only means of obtaining payment was by advertising and selling the property mortgaged.

Frieze filed a bill in equity in the supreme court of Rhode Island, praying, among other things, for an injunction of the sale of the stock of James in the Atlantic De Laine Company, until the treasurer had furnished a statement of the affairs of said company. The injunction was granted.

On the 15th of February, Chapin received from Frieze, the assignee of Gen. James, the following letter:

PROVIDENCE, *Feb.* 15, 1853.

GEORGE W. CHAPIN, Esq., *Trustee for Hill, Carpenter & Co., and others, and Treasurer Atlantic De Laine Company:*

DEAR SIR: I feel it my duty to demand of you a statement of the condition, standing, and accounts of the Atlantic De Laine Company,

so that I may be able to represent the De Laine stock, &c., which you have advertised, as trustee, to be sold on the 25th and 26th instants, in its true light and value, and make it sell for what it is worth.

Very truly, yours,

L. B. FRIEZE,
Assignee of Charles T. James.

Chapin afterwards saw Frieze at his (Chapin's) office, and gave him verbally a statement of the condition of the company, of its liabilities and assets, with which verbal statement he understood Frieze
361 to express himself satisfied, Chapin supposing nothing more was necessary. When an injunction was granted upon the allegation of Frieze, that he had been unable to obtain the accounts which he desired, a written statement was rendered by Chapin, showing the condition of the company, January 1st, 1853. The following is a copy of the statement:

Statement of the Atlantic De Laine Company, January 1st, 1853.

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CREDIT.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

This statement was taken to Mr. Frieze by Chapin's clerk, George W. Monroe, in a sealed envelope, with a letter to Mr. Frieze, of which letter the following is a copy;

PROVIDENCE, *February 26th*, 1853.

Mr. L. B. FRIEZE, *Assignee:*

Herewith you have a statement of the affairs of our company. If you wish for any information more, and will state it in writing, I will furnish it, if in my power.

Very truly,

GEORGE W. CHAPIN,
Treasurer.

Chapin did not render any statements of the accounts of the company with James, as none was requested, they having been rendered some time previously.

362 This statement was a correct and true statement of the affairs and condition of the De Laine Company, and is similar to the statements furnished to General James, as well as the other directors, annually, on the first of January. Such statements were never with-

held by Chapin from either Frieze or James when requested or desired, and, when rendered, they were correct and true.

The statements of the accounts of the company with James for building the mill, and with Frieze for advances made him for completing the mill, and any other accounts with either of them, were never refused by Chapin at any time. James never requested any such accounts. Mr. Frieze did, and they were furnished him.

James and Frieze had free access to the books at all times, and could at any time have known the state of their accounts, by examining the books. They never complained that they either had not obtained or could not obtain a knowledge of their accounts.

On the 1st of March, 1853, George B. Holmes, as the friend of James and his assignee, called on Chapin to see if a compromise-settlement could not be made. The proposition for settlement was entertained by Chapin, and negotiations for settlement were carried on for several days, Holmes taking the lead on behalf of his friend James and his assignee.

Mr. Potter and Mr. Gardner, friends of Mr. James, were also consulted, the terms of settlement were finally agreed on, the releases were signed and sealed on the 2d day of March, 1853, and placed in the hands of Mr. George B. Holmes until the individual releases by the stockholders to James were obtained. These did not come to hand until after the 10th of March, after which the papers above mentioned were exchanged.

The company made the settlement agreed upon with great reluctance, feeling that they were receiving scarcely any value for the large amount of money loaned. Nothing but the fact that there was no possibility of obtaining anything more from James or the assignee led them to make it.

When the $75,000 loan was made to James, the parties supposed they received securities to the value of at least $100,000, independent
363 of his interest in the De Laine Company, and as late as June, 1852, at which time some negotiations took place between them and James, the company were confident that the trustee had sufficient property in his hands to pay off the loan without foreclosing the mortgage on James' interest in the company. At that time, June, 1852, none of the property had been sold but the Warwick farm, realizing about $1,300.

The mortgage on the homestead was valued at $20,000, but realized only $9,800.50. The mortgage on the Warwick farm was valued at $10,000. It realized $5,786.79. The mortgage on the Scituate farm was valued at $3,000. Nothing was realized from it. The $50,000 Cannelton mortgage-notes were valued at par. Only $21,000 were obtained for them. The notes were secured by a mortgage on the Cannelton mill in Indiana which James had built for the Cannelton Company. He received in part payment therefor their acceptances of his drafts. These mortgage-notes were put into his hands by the company for negotiation, the proceeds to be applied to the payment of said acceptances of his drafts.

In violation of his trust, he pledged said $50,000 of notes to Chapin as trustee, in part security for the $75,000 loan. His drafts on the Cannelton Company, which he had negotiated with various parties, went to protest, the company having failed. The different holders of these drafts claimed of Chapin said mortgage-notes as their property on account of the agreement made by James with the Cannelton Company.

To avoid litigation, Chapin, as trustee, was obliged to compromise with the parties claiming the notes for $21,000. For the one thousand shares East Tennessee Mining and Manufacturing Company, valued by James at $25,000, there never was anything received. Copies of the

papers which were executed at the time of the settlement are in Printed Record, marked K, L, M, and N, pages 283 and 284.

At the time of the settlement, we had loaned the assignee of James, to aid him in completing the contract, $54,839.86. From this amount was deducted $13,098.98, due to James' contract-account for interest, &c., leaving a balance due by the assignee to the company of $41,740.88.

There was due to Chapin, as trustee of the stockholders, $43,092.58.

364 Total amount due to both, $84,833.46. We also had a claim on James' estate for damages for non-fulfillment of his contract, which was put down in the statement furnished Frieze at $50,000. None of the stockholders estimate the damages below this amount, and some of them much above it. The statement furnished the assignee was a true copy of the books January 1st, 1853.

At this time James' bill for building the mill had never been presented to the company, and consequently had not been credited to his contract-account. At the time of the settlement it was agreed that the date on which his bill should be credited to his contract-account should be February 1st, 1852. There was, consequently, eleven months' interest on $260,000, say $14,300, due said account January 1st, 1853, increasing the liabilities of the company so much. In order to aid the assignee in obtaining the balance of the machinery due from William Mason & Co., of Taunton, the company were obliged to join said Frieze in a bond to furnish certain stocks or their value, for a copy of which see printed record, page 288, marked P.

Frieze was unable to obtain the stock, and the company were obliged to pay Mason & Co. $6,550 to be released from said bond. (See copy of release, marked Q, printed record, page 289.)

The bond, therefore, increased the liabilities of the company $6,550. The indebtedness of the company to previous parties was, as will be seen by the statement, $552,046.02, to which must be added the above-mentioned sums of $14,300 and $6,550, making the total liability of the company January 1st, 1853, $572,896.02. They had on hand at that date personal property, such as cash, bills receivable, tools, cotton, stock at mill, de laines, cassimeres, &c., &c., valued at $355,855.21. The de laines, however, were overrated, they not realizing when sold as much by $8,000 as estimated. This amount deducted from $355,855.21 leaves $347,855.21 as the value of our personal property at that date, which amount deducted from the amount of our liabilities left $225,040.81 to be realized from the other assets of the company in order to enable it to pay its existing debts. These assets were only two, viz:

365 the claim on the assignee for the amount loaned him to that date, which was $53,314.77, and the mill-property, which had cost $310,006.04. The first item was undoubtedly valueless, as he, Frieze, had not a dollar belonging to the estate, and from that time to this has not realized enough therefrom to pay for his own services. The mill-property was not worth what it had cost. The market was overstocked with de laines, raw material was high, our goods were bringing no more, if as much, as they cost to make, and there was but little possibility of a change. The idea of abandoning wholly or in part the manufacture of de laines was agitated both before and after the settlement.

Soon after the settlement it was resolved to sell what machinery was only adapted to making de laines, and replace the same by such as would enable the company to manufacture cotton cloths with all our machinery. That not adapted for making cotton goods was sold for $20,000 less than cost, to replace which with cotton machinery cost us $42,000. The engine put up by James had proved so nearly a total fail-

ure that after expending nearly $5,000 to put it in order, and stopping the mill often (at one time five consecutive weeks) to repair it, it was decided before the settlement to replace it with a new one.

This was done shortly after the settlement, costing us $10,000, after deducting what was received from the sale of the old engine. Allowing the mill to have been worth its cost, and to be sold for $310,000, it would leave $85,000 to be divided among the stockholders, who held 237 shares, giving the value of each share $355.65, and for the 113 shares standing in James' name $40,527.45, a sum insufficient to pay the trustee's claim alone. The above statement refers to January 1st, 1853, when the accounts of the company, as was the uniform custom, were made up and their books balanced. At the time of the settlement the affairs of the company were substantially the same, excepting as hereinafter stated.

So depressed was manufacturing at that time, and so large an expenditure was imperative to put it in order to produce cotton goods, (some $75,000,) it would not have sold for over, if for, $250,000, rendering the stock almost valueless.

366 The condition of the company was a critical one. They were carrying a very heavy accommodation debt. Owing to the smallness of their capital, on which the interest was very large, they had no credit but what was derived from the responsibility of the stockholders of the company, who were individually liable for all the debts. The business of the company was unprofitable, and but little prospect of its being remunerative for a long time. The value of the capital stock was nominal.

One of the firms who were stockholders were determined to be clear of their individual responsibility for the debts of the company. They offered the company their stock without consideration, giving it to them, but as they were persons of wealth the company refused to accept their offer. Then they came forward and offered the company not only the stock, but to pay the company five hundred dollars per share in addition to the gift of their stock, and under the circumstances the company accepted the offer, and immediately a much larger stockholder made a like offer, which was declined by the company at once. This transaction took place in 1855, when the company was in quite as good a condition as when the settlement was made.

The Atlantic De Laine Company held a judgment against James for over $5,000, with interest and costs thereon. The note was originally made by James payable to the order of L. B. Frieze, for $5,000, and its payment guaranteed by the Globe Printing Company and by Hill, Carpenter & Co. The purpose of making the note was to enable James to raise money to pay for labor at the De Laine Mill. It was preferred in the assignment of James, but was never paid by the assignee. It was paid by the guarantors, and was held by them, and was theirs at the time of the settlement of the Atlantic De Laine Company with Gen. James and his assignee. After that settlement the Atlantic De Laine Company purchased said note of the guarantors, paying the full amount due thereon. Chapin was directed to obtain payment thereon, and did so, and transferred the judgment to the company, and the judgment is now unsatisfied.

367 After the settlement with Frieze, Chapin told Frieze the statement was useless to him, and as the company was in a very unflattering condition, Chapin would prefer to have Frieze return it to him that the public might not know how badly off the company were

Frieze returned it to Chapin, and he destroyed it, as he supposes, as he cannot find it.

The large storehouse is a wooden framed building, with the sides and roof covered with slate. It was begun while James was building the mill. The same parties who furnished the stone for the mill foundation furnished that for the storehouse, and charged it to James. He paid for the labor of laying the said stone; also a part of the carpenter's work, and furnished some other materials, all of which was credited to him on his contract-account, December 31st, 1851, the amount being $1,323.22, as will be seen by referring to printed record, paper marked "B," page 273.

The Atlantic De Laine Company paid for almost all the lumber, for all the slating and fixtures, directly to the parties furnishing them, and also for considerable of the labor.

The dye-house belonged to the cassimere department, being attached to the mill. It was agreed between James and Chapin, as trustee and attorney, that the building should go on at the same time as the mill, and the company would pay him for it.

What was done by him amounted to $580.05, and is duly credited to him on his contract-account, December 31, 1851, as will be seen by referring to printed record, paper marked "B," page 273.

No repair-shop was built, the room used as such being in the building, styled in the contract as a store and counting house, 80 feet by 40 feet, two stories high. The blacksmith's shop was not erected until after James' assignment, and was entirely built and paid for by the Atlantic De Laine Company.

The statement of the affairs of the company was not made with any intention to deceive or defraud the said Frieze. They were correct and true statements of the condition of the company. Chapin was always ready and willing to give him any information that James or Frieze desired about the affairs of the company. When a written statement could not be furnished immediately, it was on account of the books not being made up.

368 The books naturally belonging to the mill, such as time and labor books, books for keeping account of all articles received at the mill, and all articles used therein, invoice-books containing memoranda of all shipments of goods from the mill, and books for keeping account of the cost of goods manufactured, and also of the rent-roll, were kept at the office of the mill. George F. Wilson was the book-keeper. The accounts kept on these books were rendered to Chapin every six months, and on his books carried to the proper accounts.

All invoices of goods were sent to Chapin as soon as they were shipped, and at once entered on the books at his office.

At Chapin's office in the city were kept the stock and transfer books, the day-book, journal, ledger, and cash-book, in which were contained all the transactions of the company. Therein were recorded all the purchases and sales of merchandise, all notes given and paid, all drafts drawn and discounted, accounts with the various agents and banks, and accounts of all articles and money sent to the mill.

At the office of Chapin were kept only the books which showed only the actual condition of the company's business and value of its property. Samuel C. Blodgett was the book-keeper, and George W. Munroe was the assistant. General James was aware from the time of the organization of the company where the above books were kept, and knew that at Chapin's office, and there only, could be obtained the amount of the company's assets and liabilities, and the general condition of the company's business.

When Frieze called for a statement it was given, as before stated, by Chapin verbally, he supposing it sufficient and all that was wanted. When the injunction was granted, Chapin sent Frieze a statement in writing, the same which was sent annually to the directors. Frieze made no complaint and called for no further account. He could have had any explanation that he desired at any time.

Neither the attempt to foreclose the mortgage, nor any act of the company, nor of Chapin, nor of any of the officers or members of the company in relation to said mortgage or said stock, were with
369 any intent to prevent any one from bidding at said sale, or with the object of obtaining the stock below its fair value. On the contrary, it was the desire of all that some one outside the company would purchase, as we were greatly in need of funds, and proposed to make the sale to realize the amount due us as far as the property would go.

The following is a true and exact statement of the affairs of the Atlantic De Laine Company on the first day of March, A. D. 1853:

DEBTOR.

Bills payable	$434,260 61
Due Hoyt, Tillinghast & Co. for advances	63,398 02
Due Hacker, Lea & Co. for advances	38,796 37
Due Dodge, Tucker & Co	32,767 41
Due Hill, Carpenter & Co	24,758 69
Due Day, Owen & Co	1,564 39
Due George W. Chapin, trustee	8,524 30
Due Globe Printing Company on account	888 12
Due S. C. Blodgett	50 00
Stock-account	237,495 33
	$842,503 44

CREDITOR.

Cash	$24,204 73
Interest	8,479 78
Albert Dailey	1,900 00
Stock at mill and amount paid for labor and supplies since January 1st, 1853	28,229 39
L. B. Frieze, assignee	53,314 77
Cotton at mill January 1st, and sent to mill	11,923 67
Construction-account	40,795 33
Cassimeres in agents' hands and stock in process at mill	9,038 97
De laines in agents' hands and stock in process at mill	170,208 64
Wool at mill January 1st, 1853, and purchased since	150,210 76
Contract-account, Charles T. James	260,240 64
Real estate	13,140 60
George W. Chapin	326 37
Providence Steam and Gas Pipe Company	162 38
For account of loss	70,327 41
	$842,503 44

370 This statement, like the statement of January 1st, 1853, was made up from the books, and is a true and correct statement of he affairs and condition of the company.

This statement was made up in compliance with a request in 23d cross-

interrogatory put to Chapin by the plaintiff's counsel, and is annexed to Chapin's deposition.

See page 263, printed record, marked "BB." Printed record, page 312.

The court having refused to hear the motion of the respondents, the Atlantic De Laine Company, for instruction to the master, or for a modification of the interlocutory decree, and the same having been, in consequence of such refusal, withdrawn, the said respondents still protesting that the order of the master calls for an account which in this case, in its present position, they are not in justice and equity bound to render, and still claiming that it is the duty of the master to apply to the court for instructions in the premises, and reserving all their rights in the premises;

Nevertheless, subject to such protest, claim, and reservation, render the following account, pursuant to and in compliance with the order of the master.

The respondents having submitted the foregoing "state of facts," including an account of all the dealings between Charles T. James or Lyman B. Frieze, assignee of Charles T. James, and said Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer, trustee, or otherwise, and having heretofore filed with the master specific accounts between Charles T. James and the Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer, trustee, or otherwise, (marked "F,") and a specific account between Lyman B. Frieze, assignee of Charles T. James, and the Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer, trustee, or otherwise, (marked "G,") and a specific account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, and which passed or came into the hands of said Atlantic De Laine Company, or George W. Chapin, as treasurer, trustee, or otherwise, (marked "H,") proceed to submit in compliance with the order of the master, but under protest as aforesaid,

371 First. A full, true, particular, and detailed statement and account of all the shares of the capital stock of the said Atlantic De Laine Company, which were originally subscribed by Charles T. James, as follows:

Charles T. James originally subscribed for one hundred and fifty shares of the capital stock of the Atlantic De Laine Company.

Second. Of the shares of the capital stock of the Atlantic De Laine Company, which were owned and held by Charles T. James, deceased, and which were conveyed to George W. Chapin, as treasurer, or trustee, or otherwise, as mortgagee, by mortgage of July, 1851, or which passed into his hands, possession, or control, as treasurer, trustee, or mortgagee, or otherwise, or into the hands, possession, or control of said company by virtue in any manner of the instruments of release and settlement dated March 2d, 1853, (marked respectively "C" and "D," and appearing on pages 28, 29, 30 and 31 of the printed record in this suit,) as follows:

Charles T. James had, at the time of his assignment, in the performance of his contract, paid, in work and materials, one hundred and thirteen thousand dollars, which would entitle him to one hundred and thirteen shares of the stock, but this was subject to a deduction of about one hundred thousand dollars, being the amount advanced to him by the company under the contract, over and above the work and materials furnished by him at the time. He was not entitled to any certificate of stock, nor was any other stockholder. The company was not in a condition to issue said certificates, and had not ordered the issue of any.

The stock was not all subscribed for. The mill was not completed, and the business of the company was not commenced. The mode of dealing between Gen. James and the company was as follows:

When the first installment fell due under the contract, without any reference to the amount of work and materials then furnished by General James, the company, by George W. Chapin, as attorney before the incorporation, and treasurer after the incorporation, drew upon each subscriber to the stock, Gen. James included, drafts for their pro-
372 portional amounts of said installment. These drafts were handed to Gen. James, and he gave the receipt for the installment, and the company gave him credit for the amount of the draft drawn on him as so much paid towards his subscription to the stock, and so on as the different installments fell due. In this mode of doing business, and in no other way, Gen. James, at the time of his assignment, had paid in one hundred and thirteen thousand dollars towards his subscription for stock. At the same time the company had paid to him, on account of his contract, two hundred and twenty-one thousand dollars, a sum exceeding the value of the work and materials then performed and furnished by him under it at least one hundred thousand dollars, so that even if his stock, upon which the company had a lien, and George W. Chapin, as trustee of the stockholders, had a mortgage, was at this time reckoned at par, he had a very small, if any, interest in the company.

And it was this interest only which was owned and held by Charles T. James, deceased, and which was conveyed to George W. Chapin, as treasurer, trustee, or otherwise, as mortgagee, by mortgage of July 1851, or which passed into his hands, possession, or control as treasurer, trustee, mortgagee, or otherwise, or into the hands, possession, or control of said company by virtue in any manner of the instruments of release and settlement dated March 2d, 1853, marked respectively "C" and "D," and appearing on pages 28, 29, 30 and 31 of the printed record in this suit.

Third. Of the value of the shares of the capital stock of the Atlantic De Laine Company which were owned and held by Charles T. James, deceased, and which were conveyed to George W. Chapin, as treasurer, trustee, or otherwise, as mortgagee, by mortgage of July, 1851, or which passed into the hands, possession, or control of said company by virtue in any manner of the instruments of release and settlement dated March 2d, 1853, marked respectively "C" and "D," and appearing on pages 28, 29, 30 and 31 of the printed record in this suit.

They had a merely nominal value; a short time before the negotiations for a settlement were commenced, which resulted in the ex-
373 ecution of the instruments of settlement and release dated March 2d, 1853, marked respectively "C" and "D," and appearing on pages 28, 29, 30 and 31 of the printed record in this suit, the condition of the company was as is set forth in the following statement:

Settlement of the Atlantic De Laine Company, January 1st, 1853.

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CREDIT.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract-account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

I would state our directors' estimate that $50,000 or more of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

(Signed) GEORGE W. CHAPIN,
Treasurer.

PROVIDENCE, *February* 26, 1853.

Which statement was presented by George W. Chapin, treasurer of the Atlantic De Laine Company, to Lyman B. Frieze, assignee of Charles T. James, at the request of said Frieze, a short time before the execution of said instruments of release and settlement, and was correct and true, and was the statement of the condition and affairs of the said company upon which the said Frieze proposed to execute and did execute the said instruments of release and settlement, and was the only
374 written statement of the condition and affairs of said company ever called for by said Frieze or presented to him by said Chapin, with the exception of certain verbal statements and explanations consistent therewith.

A more detailed statement of the condition of the company at or about the time of the execution of said instruments of release and settlement is as follows, viz:

At the time of the settlement, the company had loaned the assignee of James, to aid him in completing the contract.	$54,839 86
From this amount was deducted	13,098 98
Due James' contract-acount for interest, &c., leaving a balance due by the assignee to the company of	41,740 88
There was due George W. Chapin, as trustee of the stockholders	43,092 58
Total amount due to both	84,833 46

The company also had a claim on James' estate for damages for non-fulfillment of contract, which was put down in the statement furnished Freize at $50,000. None of the stockholders estimated the damages below this amount, and some of them much above it. The statement furnished the assignee was a true copy of the books, January 1st, 1853. At this time James' bill for building the mill had never been presented to the company, and consequently had not been credited to his contract-account. At the time of the settlement, it was agreed that the date on which his bill should be credited to his contract-account should be February 1st, 1852. There was consequently eleven months' interest on

$260,000, say $14,300, due said account, January 1st, 1853, increasing the liabilities of the company so much. In order to aid the assignee in obtaining the balance of the machinery due from William Mason & Co., of Taunton, the company were obliged to join said Frieze in a bond to furnish certain stocks or their value.

Frieze was unable to obtain the stock, and the company were obliged to pay Mason & Co. $6,550 to be released from said bond. This bond, therefore, increased the liabilities of the company $6,550. The indebtedness of the company to various parties was $552,046.02, to which must be added the above-mentioned sums of $14,300 and $6,550, making the total liability of the company, January 1st, 1853, $572,896.02.

375 The company had on hand at that date personal property, such as cash, bills receivable, wool, cotton, stock at mill, de laines, cassimeres, etc., etc., valued at $355,855.21. The de laines, however, were overrated, they not realizing, when sold, as much by $8,000 as estimated. This amount, deducted from $355,855.21, leaves $347,855.21 as the value of the company's personal property at that date, which amount deducted from the amount of our liabilities left $225,040.81 to be realized from the other assets of the company in order to enable it to pay its existing debts. These assets were only two, viz: the claim on the assignee for the amount loaned him to that date, which was $53,314.77, and the mill property, which had cost $310,006.04. The first item was undoubtedly valueless, as he, Freize, had not a dollar belonging to the estate, and from that time to this has not realized enough therefrom to pay for his own services. The mill property was not worth what it had cost. The market was overstocked with de laines, raw material was high, our goods were bringing no more, if as much, as they cost to make, and there was little probability of a change. The idea of abandoning in whole or in part the manufacture of de laines was agitated both before and after the settlement. Soon after the settlement, it was resolved to sell what machinery was only adapted to making de laines, and replace the same by such as would enable the company to manufacture cotton cloths with all the machinery. That not adapted for making cotton goods was sold for $20,000 less than it cost, to replace which with cotton machinery the company had to pay $42,000. The steam-engine put in by James had proved so nearly a total failure that, after expending nearly $5,000 to put it in order, and stopping the mill often (at one time for five consecutive weeks) to repair it, it was decided before the settlement to replace it with a new one. This was done very shortly after the settlement, costing $10,000, after deducting what was received from the sale of the old engine. Allowing the mill to have been worth its cost, and to be sold for the $310,000, it would leave $85,000 to be divided among stockholders, who held 237 shares, giving a value of $355.65 per share, and for the 113 shares stand-

376 ing in James' name, $40,527.45—a sum insufficient to pay the trustee's claim alone. The above statement refers to January 1st, 1853, when the accounts of the company, as was the uniform custom, were made up and their books balanced. At the time of the settlement the affairs of the company were substantially the same, excepting as hereinbefore stated. So depressed was manufacturing at that time, and so large an expenditure was imperative to put it in order to produce cotton goods, (some $75,000,) it would not have sold for over, if for, $250,000, rendering the stock almost valueless. The condition of the company was critical. They were carrying a very heavy accommodation debt, (owing to the smallness of their capital,) on which the amount of interest was very large. They had no credit but what was derived from the

responsibility of the stockholders, who were individually liable for all the debts. The business of the company was unprofitable, and there was but little prospect of its being remunerative for a long time. The value of the capital stock was nominal.

A full and detailed statement of the exact condition, standing, and accounts of the Atlantic De Laine Company on the 1st day of March, A. D. 1853, is as follows:

DEBTOR.

Bills payable	$434,260 61
Due Hoyt, Tillinghast & Co. for advances	63,398 02
Due Hacker, Lea & Co. for advances	38,796 37
Due Dodge, Tucker & Co. for advances	32,767 41
Due Hill, Carpenter & Co	24,758 69
Due Day, Owen & Co. for advances	1,564 39
Due George W. Chapin, trustee	8,524 30
Due Globe Printing Company on account	888 12
Due S. C. Blodgett on account	50 00
Stock-account	237,495 33
	$842,503 44

CREDITOR.

Cash	$24,204 73
Interest	8,479 78
Albert Dailey	1,900 00
Stock at mill and amount paid for labor and supplies since January 1st, 1853	28,229 39
377 L. B. Frieze, assignee	53,314 77
Cotton at mill January 18th, 1853, and sent to mill to date	11,923 67
Construction-account	40,795 33
Cassimeres in agents' hands and stock in process at mill.	9,038 97
De laines in agents' hands and stock in process at mill	170,208 64
Wool at mill, January 1st, 1853, and purchased since	150,210 76
Charles T. James' contract-account	260,240 64
Real estate	13,140 60
George W. Chapin	326 37
Providence Steam and Gas Pipe Company	162 38
For account of loss	70,327 41
	$842,503 44

Fourth. Of the income, dividends, whether declared or otherwise, or which might have been declared, profits and increase in value thereon during the several years and for each year from day of July, 1851, until the date of the decree, viz: November 25th, 1867.

This can only be arrived at by a statement of the history of the company subsequent to March 2d, 1853.

After the execution of the said instruments of release and settlement, the one hundred and thirteen shares of the capital stock of the Atlantic De Laine Company owned and held by the said Charles T. James in the manner above stated were distributed, fifty-seven shares thereof proportionally to the parties who made the loan to the said James, for the security of which George W. Chapin, as trustee, held a mortgage upon the interest of the said James in the said Atlantic De Laine Company,

with other property, and the remaining fifty-six shares were distributed proportionally to the stockholders in said company, as will appear from the books and records of said company.

At the time of the execution of said instruments of release and settlement, as will appear from the foregoing, the company had no capital or credit wherewith to conduct its business, and was compelled to resort to the credit of its stockholders.

It was accordingly understood and agreed that the stockholders should from time to time accept and endorse the drafts and
378 other commercial paper of the company, and in case the business of the company should be successful, that the company should compensate such stockholders for such acceptances and endorsements, and under this understanding and agreement, and by means of such indorsements and acceptances, the business of the company was conducted.

The condition of the company continued to be such, that on the 5th day of October, A. D. 1855, an assessment was made upon the shares of the capital stock held by Hoyt, Tillinghast & Co., Hacker, Lea & Co., Hill, Carpenter & Co., the Globe Printing Co., and Dodge, Tucker & Co., being all the stockholders at the time except the company itself, of five hundred and twenty-five dollars upon each share; which assessment was paid by all the stockholders except Hill, Carpenter & Co.

Afterwards, and at a meeting of the stockholders of the company, compensation was made to the said stockholders for such endorsements and acceptances to the amount of $231,371.65, as will appear from the record of said meeting and the books of the company.

Below is a statement of the results of the business of the company for each and every year from , 1851, to January 1st, 1868, it being impossible to make up from the books an exact statement ending on the 25th day of November, 1867:

Loss to December 31st,	1852	$65,551 92
" in	1853	11,305 61
" "	1854	3,930 05
Gain "	1855	29,983 50
" "	1856	42,026 01
" "	1857	4,193 67
" "	1858	42,816 65
" "	1859	106,590 95
" "	1860	98,318 04
" "	1861	108,180 30
" "	1862	360,827 92
" "	1863	320,738 09
" "	1864	111,444 13
Loss "	1865	846 92
" "	1866	288,191 94
" "	1867	124,479 52

379 A large part of the loss charged in 1866 accrued in 1864 and 1865 from the decline in value of wool and goods on hand, the amount of which was not ascertained until 1866.

Below is a statement of the amount of the liabilities as they appear on the books of the company January 1st, 1868. And the books correctly represent the liabilities of the company at that time, unless there may have been outstanding accounts and claims not then presented and adjusted:

$2,865,104.97.

Below is a statement of the assets of the company on January 1st, 1868:

Real estate, buildings, machinery, &c., as standing on the books	$1,744,522 55
Cash, bills receivable, and debts due from sundry persons	214,416 53
Wool, cotton, materials, goods manufactured and in process, estimated at market-value in all	1,459,217 70
In all	$3,448,156 78

The cost of the first mill, its machinery, and the buildings connected therewith, was $491,281.91, owing to the extra expenditure caused by the failure of James to complete his contract, and the cost of changing the machinery so as to manufacture cotton cloth, new steam-engines, &c., &c., which amount was considered above its value. In order to reduce it to its actual value, $191,281.91 of said amount was charged off to profit and loss in 1858 and 1859. All real estate, buildings, and machinery added since about the time of the erection of the first mill stand on the books at their cost, amounting to $1,474,522.50.

The company claim that the shares of the capital stock of the company claimed by the complainant, if her title to the same shall be established, are subject—

1. To the payment of their just proportion of the commissions paid by the company for endorsements, acceptances, &c., to enable them to carry on their business.

2. To the payment of their just proportion of any claims for similar services not yet liquidated.

3. To the payment of their just proportion of the assessments paid in by the other stockholders as hereinbefore stated.

380 4. To make proper proportional compensation for the risks and responsibilities incurred and sustained by the remaining stockholders in the conduct of the business from the date of the settlement with L. B. Frieze, assignee of General James.

The value of the capital stock of the company at the present time.

The foregoing statement furnishes the only means of showing the value of the capital stock of the shares of the company, and no more definite answer can be made until it is known what can be realized for the real estate, buildings, machinery, stock, goods, &c., of the company.

No dividends have been declared or could have been declared, as the surplus earnings of the company and its funds otherwise acquired have been from time to time invested in buildings, machinery, and the like, with the knowledge, approval, and assent of the directors and stockholders.

The above statements are made from the books and records of the company, and said books and records are open to the inspection of the master, and of the complainant and her counsel, under the direction of the master, and the respondents will at all times be ready to explain the same, and furnish copies thereof upon the call of the master or of the complainant and her counsel, under the direction of the master, this offer being subject to protest as aforesaid.

As the preceding statement refers to parties formerly stockholders in the company, but no longer such, it may be proper to state that the

present stockholders are Edwin Hoyt, William Brenton Greene, Nehemiah Knight, Josiah Chapin, A. Tucker, William C. Chapin, George W. Chapin.

ATLANTIC DE LAINE CO.
GEORGE W. CHAPIN,
Treasurer.

Subscribed and sworn to before me by George W. Chapin on this seventeenth day of November, A. D. 1868.

CHARLES HART,
Master.

380*a* [M.]—*Filed December* 30, 1868.

The complainant respectfully protests against the reception by the master of the so-called account filed by the defendants and sworn to November 17th, 1868, in pretended compliance with the orders of the master. And she protests especially against that portion of the same denominated "state of facts," and against the reception thereof by the master, because the same is surplusage, is not responsive to the orders of the master, is wholly and totally irrelevant, immaterial, incompetent, and unnecessary for any purpose in the matter of the accounting before the master.

And she further protests against said so-called account, and against the reception thereof by the master, because the same undertakes to set up and to introduce before the master, in the accounting before him, the depositions and testimony given by George W. Chapin, treasurer of the corporation, defendant, trustee in the case, before it was heard by the court, and which the court directed should be stricken from the record as incompetent and inadmissible before the hearing on the merits.

And she further protests against said accounts and its reception by the master, because the same assumes, claims, sets up, and maintains before him, and is based upon the absolute, present force, validity, and obligation of the instruments of release and settlement, which the court, in its opinion and by the terms of the decree under which the master acts, has declared to be void, and has decreed to be set aside as having been obtained by fraudulent representations and concealments.

And so protesting, and without waiving any of her rights in the premises to move further or otherwise touching said so-called account, either before the master or the court, as she may be advised, she now respectfully moves the master that the said defendant corporation and George W. Chapin, as treasurer, trustee, or otherwise, be by him ordered and directed to produce at his office each, all, and every the books of account kept by them, or either of them, which contain any record or entry of the dealings between Charles T. James or

380*b* Lyman B. Frieze, assignee of Charles T. James, and said defendant corporation and said Chapin, as treasurer, trustee, or otherwise, or relating in any manner to any assigned or mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said defendant corporation or said Chapin, as treasurer, trustee, or otherwise, under the operation of the instruments of release and settlement, which have been declared void and decreed to be set aside for

fraud or otherwise; said books to be open to the inspection and examination of the complainant administratrix and her counsel, under the direction of the master.

By her solicitor, JAMES H. PARSONS.

PROVIDENCE, *December 30th*, 1868.

[N.]

[The pamphlet N contained the several exhibits it the case from A to K, as printed.]

[O.]

Mr. JOHN R. BALCH:

DEAR SIR: In order that you may have a statement of what the complainant in the suit James vs. De Laine Company, in which you have been appointed accountant and book-keeper, desires, I write the following in addition to what I said to you a few days ago.

On page 6 of the printed pamphlet called "Motion for Instructions to the Master," you will find the motion of February 8th, 1868, marked "A," certain accounts, marked respectively "F," page 11 of said pamphlet, "G," page 21, and "H," page 27 of the same, and filed in alleged compliance with the said motion "A." The papers "I" and "J," page 28 of said pamphlet, show that additional accounts were asked for,
381 and the proceedings before the master, page 3 of the same, show that the orders were not complied with by the accounts appearing in said pamphlet as filed by said corporation. Mrs. James desires you to take the accounts marked "F," "G," and "H," compare them with the books and accounts submitted by the company and G. W. Chapin, under the master's order, verifying the same, and note if there be any errors or omissions therein.

She also desires you to examine the account or paper sworn to by George W. Chapin, November 17th, 1868, of which a corrected printed copy has been handed to you, and so far as any statements, accounts, declarations, &c., contained in the same may appear in the books and accounts of said company, to verify the same, and note if there be any errors or omissions in the same.

She then requests that you shall take the motion marked "A," and from the books, papers, and accounts of said company and G. W. Chapin, trustee, you shall make out an account or accounts in response thereto.

She desires you to take said motion, and to make a full detailed and particular account or series of accounts, if that should be the better course, such as will make your response thereto such a full, true, detailed, and particular statement as can be made from the books and accounts submitted to you by the company and Mr. Chapin.

In fact, she wants from you such a full, true, particular, and detailed account in compliance with said order as a book-keeper and accountant, as can be made up and presented from the books and accounts submitted to you.

These are the general requests made to you now and at this stage of the case. You can proceed with the suggestions I have made, and I may have occasion to make others, or to ask for more matters pending your investigations or after they shall have been completed.

Yours, &c.,

JAMES H. PARSONS.

PROVIDENCE, *March 29th*, 1869.

P. S.—As to what I mean by detailed statements, I may illus-
382 trate by reference to the so-called account or paper filed by Mr. Chapin. That reports the liabilities of the company to be over $2,000,000, but states nothing but the amount. In making up your account I want what the motion calls for, to wit, a full, true, particular, and detailed statement touching all the matters asked for in and by the order made on the motion. I make this suggestion in addition to what I have already stated.

[P.]

(Copy.)

A special meeting of the Atlantic De Laine Company was held at their office in Providence, October 10th, 1861, pursuant to the following notice:

"PROVIDENCE, *October 3d*, 1861.

"A special meeting of the Atlantic De Laine Company will be held at their office, in this city, on Thursday, October 10th, 1861, as 10 a. m., for the purpose of electing a director in the place of Mr. Joseph Lea. Also for considering and deciding on claims for commissions for accepting and endorsing accommodation and other dratts of the company. Also to consider the propriety of altering by-law No. 8 so that meetings of the company may be called at shorter notice than said article requires, and for the transaction of any other business that may legally come before them."

Present, Josiah Chapin, Edward Hoyt, A. Tucker, jr., Geo. W. Chapin. Messrs. William Brenton Greene and Nehemiah Knight were present by their proxies, Edwin Hoyt, and William C. Chapin by his proxy, George W. Chapin.

After reading the notice of the meeting, William C. Chapin was elected a director in the place of Joseph Lea. The claims of various parties for commissions were then presented by the treasurer, who said they had been duly examined and compared with his books and found correct. The following resolution was then passed:

383 Whereas the following parties have presented to the treasurer of this corporation claims for commissions for accepting and endorsing accommodation and other drafts of the corporation, which claims are as follows:

Hoyt & Tillinghast, for	$3,434 06
Hoyt, Tillinghast & Co., for	59,766 75
Hoyt, Spragues & Co., for	26,484 10
Globe Printing Co., for	16,367 27
George W. Chapin, for	68,604 64
A. Tucker, jr., & Lewis Mills, surviving partners of late firm of Dodge, Tucker & Co., for	7,168 57
Tucker, Newton & Mills, for	10,796 34
Tucker, Newton & Co., for	25,721 53
Josiah Chapin, for	10,866 15

And whereas said drafts have been accepted and endorsed on the understanding between said parties and this corporation that they were entitled to a reasonable compensation for such acceptances and endorse-

ments, therefore it is agreed between this corporation and said parties to allow said claims as presented as reasonable compensation for such acceptances and endorsements.

And whereas said parties have agreed to receive in payment thereof the capital stock of this corporation at its par value; therefore it is

Resolved, That the treasurer be and is authorized and directed to issue to said parties certificates of stock of this corporation to the number of 186 shares, equal to $186,000, at the par value thereof; and for the balance of said claims the treasurer be and is authorized and directed to issue to said parties the notes of this corporation on 8, 10, and 12 months from the 30th of June last, adding interest thereto.

It was voted that article 8 of the by-laws be changed so as to require only three days' notice of meetings of the corporation, instead of six days, as now required.

Adjourned.

(Signed) GEORGE W. CHAPIN, *Clerk.*

384 [Q.]

Claims of parties for commissions for accepting and endorsing drafts of the Atlantic De Laine Company, viz:

Commissions	$184,695 89
Interest on same to June 30, 1861	44,513 52
Total claims	229,209 41
Interest on portion settled by company's notes	2,162 24
	$231,371 65

Settled as follows:

By 186 shares of the stock of the company at its par value, ($1,000)	186,000 00
Notes of the company	45,579 56
	231,579 56
Less this amount abated of the claim of one of the parties, for error	207 91
	$231,371 65

[R.]

The amount of indebtedness to and from Hoyt, Sprague & Co., by the Atlantic De Laine Company, as appears by the books of the company, on the 31st day of December of each year from the time the same commenced to December 31, 1867, is as follows:

1858, December 31st, to Hoyt, Sprague & Co	$14,411 44
1859, " " " " " "	45,483 78
1860, " " " " " "	26,662 18
1861, " " " " " "	29,367 19
1862, " " " " " "	81,447 34
1863, " " from " " "	12,354 45
1864, " " to " " "	378,836 30
1865, " " " " " "	962,919 03
1866, " " " " " "	1,136,707 94
1867, " " " " " "	2,738,275 80
Stock of goods in the hands of Hoyt, Sprague & Co., 1867, December 31st, in amount	$726,719 40

MEMORANDUM.—The stock-book of the company contains, in detail, the number of yards and the price (as estimated) per yard.

385 [S.]

At a meeting of subscribers to the stock of the Atlantic De Laine Company, called in accordance with the 7th section of the act of incorporation, and held at the office of the Globe Printing Company, on Thursday, May 22d, 1851, the following-named gentlemen were present: Charles T. James, Josiah Chapin, Paris Hill, Joseph Lea, Alanson Tucker, jr., William Brenton Greene, Joseph Carpenter, George W. Chapin.

The meeting was duly organized by appointing Charles T. James moderator, George W. Chapin, clerk.

The charter of incorporation having been read, it was voted unanimously that the same be accepted.

A code of by-laws having been presented and read by the clerk, (the same as now copied on the 9th, 10th, 11th, 12th, 13th, and 14th pages of this book, and numbered 1 to 11, inclusive,) it was voted unanimously that the same be adopted as the by-laws of this corporation.

Voted, that the charter and by-laws above accepted and adopted be printed.

A committee of nomination having been appointed by the chair, the following-named gentlemen were nominated and unanimously elected officers of the corporation, to serve until the annual meeting in February next: Josiah Chapin, president; George W. Chapin, treasurer; Charles T. James, Joseph Carpenter, Joseph Lea, William Brenton Greene, George W. Chapin, directors; Benjamin L. Bourn, clerk.

Voted, that the sum of one thousand dollars be, and hereby is, assessed upon each share of the capital stock of this corporation, to be paid to the treasurer when he shall deem it necessary.

[T.]

[This is the charter and by-laws of the Atlantic De Laine Company, with an act in relation to manufacturing corporations.]

386 [U.]

(Copy.)

No. 1. ATLANTIC DE LAINE COMPANY,
Providence, R. I., March 9, 1853.

For value received, the undersigned transfers to the Atlantic De Laine Company and George W. Chapin, trustee, 113 shares of the capital stock of the Atlantic De Laine Company, numbered as by margin.

(Signed) L. B. FRIEZE,
Assignee of Charles T. James.

Witness:
(Signed) ROBERT E. NORTHAM.

[113 shares, No. 125 to 237.]

[V.]

Notes given by Atlantic De Laine Co. to Hoyt, Sprague & Co.

1859.				
January	5.	6	months	$16,000 00
	10.	6	"	3,000 00
	17.	6	"	8,000 00
	20.	6	"	10,000 00
	26.	6	"	10,000 00
	31.	6	"	25,000 00
February	9.	6	"	10,000 00
	14.	6	"	10,000 00
	21.	6	"	12,000 00
	28.	6	"	12,000 00
March	7.	6	"	14,000 00
	14.	6	"	14,000 00
	21.	6	"	10,000 00
	21.	6	"	5,000 00
	28.	6	"	9,000 00
April	4.	6	"	7,000 00
	11.	6	"	3,000 00
	11.	6	"	5,000 00
	18.	6	"	2,000 00
	25.	6	"	5,000 00
387 May	2.	6	months	$8,000 00
	9.	6	"	9,000 00
	16.	6	"	5,000 00
	16.	6	"	5,000 00
	23.	6	"	5,000 00
	30.	6	"	5,000 00
June	6.	6	"	5,000 00
	13.	6	"	5,000 00
	18.	6	"	3,000 00
	20.	6	"	12,500 00
	27.	6	"	11,000 00
	27.	6	"	5,000 00
July	5.	6	"	10,000 00
	11.	6	"	8,000 00
	25.	6	"	5,000 00
August	8.	6	"	5,000 00
	15.	6	"	5,000 00
	22.	6	"	10,000 00
Sept.	5.	6	"	10,000 00
	12.	6	"	5,000 00
	14.	6	"	7,000 00
	19.	6	"	8,000 00
	26.	6	"	10,000 00
	21.	6	"	6,000 00
October	3.	6	"	8,000 00
	4.	6	"	5,000 00
	10.	6	"	10,000 00
	17.	6	"	8,500 00
	18.	6	"	2,500 00
	24.	6	"	5,000 00
Nov.	2.	6	"	5,000 00

	9.	6	"	7,500 00
	14.	6	"	1,500 00
	16.	6	"	2,500 00
	21.	6	"	5,000 00
	23.	6	"	2,500 00
Dec.	5.	6	"	4,000 00
	6.	6	"	2,000 00
	13.	6	"	10,000 00
	20.	6	"	10,000 00
	27.	6	"	5,000 00
388 1860.				
January	3.	6 months		$12,000 00
	9.	6	"	3,000 00
	11.	6	"	5,000 00
	16.	6	"	8,000 00
	23.	6	"	12,000 00
	30.	6	"	8,000 00
February	1.	6	"	7,000 00
	6.	6	"	7,000 00
	13.	6	"	7,500 00
	20.	6	"	5,000 00
	27.	6	"	13,000 00
March	3.	7	"	12,000 00
	5.	6	"	13,000 00
	10.	7	"	5,000 00
	12.	6	"	11,000 00
	19.	6	"	5,000 00
	26.	6	"	20,000 00
July	2.	6	"	8,000 00
	9.	6	"	9,000 00
	16.	6	"	6,000 00
	23.	6	"	6,000 00
	30.	6	"	6,000 00
August	6.	6	"	7,000 00
	13.	6	"	12,000 00
	20.	6	"	4,000 00
	27.	6	"	12,000 00
September	10.	6	"	5,000 00
	17.	6	"	5,000 00
	24.	6	"	5,000 00
October	1.	6	"	5,000 00
	8.	6	"	5,000 00
	8.	6	"	4,000 00
	22.	6	"	5,000 00
	22.	6	"	6,000 00
	29.	6	"	6,000 00
November	5.	6	"	7,000 00
	5.	6	"	9,000 00
	8.	6	"	1,500 00
	12.	6	"	1,500 00
	19.	6	"	3,000 00
	26.	6	"	6,500 00
389	December 3.	6 months		$13,000 00
	10.	6	"	9,000 00
	17.	6	"	1,000 00
	18.	6	"	4,000 00

	24.	6	"	.....	5,000 00
	26.	6	"	.....	6,000 00
1861.					
January	14.	6	"	.....	9,000 00
	21.	6	"	.....	9,500 00
February	4.	6	"	.....	3,000 00
	7.	6	"	.....	7,500 00
	12.	6	"	.....	3,000 00
	18.	6	"	.....	8,000 00
	21.	6	"	.....	3,000 00
	25.	6	"	.....	7,000 00
March	4.	6	"	.....	11,000 00
	11.	6	"	.....	3,000 00
	18.	6	"	.....	3,000 00
	25.	6	"	.....	7,000 00
	25.	6	"	.....	5,000 00
April	1.	6	"	.....	7,000 00
	8.	6	"	.....	7,000 00
	15.	6	"	.....	9,000 00
	22.	6	"	.....	5,000 00
	22.	6	"	.....	10,000 00
	29.	6	"	.....	3,000 00
May	6.	6	"	.....	8,000 00
	13.	6	"	.....	5,500 00
	18.	6	"	.....	7,337 55
	20.	6	"	.....	8,000 00
	27.	6	"	.....	5,000 00
June	3.	6	"	.....	8,000 00
	10.	6	"	.....	12,000 00
	17.	6	"	.....	10,000 00
	24.	6	"	.....	16,500 00
July	1.	6	"	.....	10,000 00
	8.	6	"	.....	7,000 00
	15.	6	"	.....	11,500 00
	22.	6	"	.....	9,000 00
	29.	6	"	.....	7,000 00
August	5.	6	"	.....	9,500 00
	12.	6	"	.....	5,000 00
390 August	12.	6	months	.....	$6,000 00
	15.	6	"	.....	3,000 00
	19.	6	"	.....	8,000 00
	26.	6	"	.....	8,000 00
September	2.	6	"	.....	9,000 00
	9.	6	"	.....	6,000 00
	16.	6	"	.....	3,000 00
	30.	6	"	.....	5,000 00
October	2.	6	"	.....	3,000 00
	7.	6	"	.....	10,000 00
	21.	6	"	.....	8,000 00
	28.	6	"	.....	10,000 00
November	4.	6	"	.....	14,000 00
	11.	6	"	.....	10,000 00
	18.	6	"	.....	5,000 00
	21.	6	"	.....	5,000 00
	25.	6	"	.....	10,000 00

December	2.	6	"	7,500 00
	9.	6	"	3,000 00
	10.	6	"	10,000 00
	16.	6	"	5,000 00
	23.	6	"	8,000 00
1862.				
January	6.	6	"	8,000 00
	13.	6	"	3,000 00
	20.	6	"	3,000 00
	27.	6	"	3,000 00
February	3.	6	"	1,000 00
	10.	6	"	3,000 00
	17.	6	"	5,000 00
	24.	6	"	6,000 00
	24.	6	"	4,000 00
March	3.	6	"	10,000 00
	10.	6	"	5,000 00
	17.	6	"	12,000 00
	24.	6	"	13,000 00
	31.	6	"	8,000 00
	31.	6	"	6,000 00
April	7.	6	"	2,000 00
	14.	6	"	10,000 00
	22.	6	"	5,000 00
	28.	6	"	8,000 00
391 May	5.	6	months	88,000 00
	10.	6	"	7,000 00
	19.	6	"	11,000 00
	26.	6	"	9,000 00
	30.	6	"	2,500 00
June	9.	6	"	5,000 00
	16.	6	"	6,000 00
				$366,837 55

[W.]—*Filed December* 2, 1869.

Whereas the defendants in the above suit, at a meeting before the master, holden on the 1st day of December, A. D. 1869, upon the proposition of the complainant to offer evidence touching the amount claimed by her as due for work and materials furnished in addition to those called for by contract, embracing the erection of large store-house, dye-house, repair-shop, blacksmith-shop, and a large amount of additional machinery, the defendants objected to the introduction of any evidence concerning said claim until the complainant had filed before the master, and in his office, a statement of the items constituting said claim. The said complainant, admitting the right of the defendants to have the items constituting said claim, herewith files in the master's office and before him the exhibit accompanying this paper and marked "No. 1," which contains the items of said claim, all of which are properly vouched. And she will, at meetings hereafter to be holden before the master, offer evidence in support of the same.

By her solicitor,

JAMES H. PARSONS.

PROVIDENCE, *Dec. 2d*, 1869.

No. 1.

Statement—vouchers of building-account, De Laine mill.

1851.			
May	20.	James A. Potter	$7,781 07
June	21.	"	247 1
	October 10.	Walworth & Nason, agents	1,744 49
392	1851.		
	September	Providence Machine Co	$115 54
1851.			
August		"	19 28
1852.			
January		"	712 94
1851.			
December		Phenix Iron Foundry	241 33
1852.			
June		"	77 38
1851.			
November		John M. Herring	2,686 47
October	24.	Henry N. Hooper & Co	535 50
May		Ray Clapp	747 00
		"	228 00
November	14.	"	419 90
1852.			
January		Paul Whitin & Sons	4,384 00
		Bradford & Hall	2,233 38
1851.			
March	21.	D. C. Jencks	187 50
June	10.	"	40 00
1852.			
February		George H. Wilbour	76 15
		"	59 39
		"	28 53
		"	29 47
		"	72 03
		"	48 84
		"	33 78
1851.			
December	13.	N. A. Eddy	142 25
		"	74 26
1852.			
January	1.	Larned Scott	458 00
1851.			
March	15.	Ray Greene	12 83
		"	4 66
October		W. W. Arnold & Son ....112.71 & 10.64	173 35
August	29.	" ....(acceptance)..	1,049 42
1852.			
January		"	10 20
1851.			
	August	W. R. Proctor ....14.98, .60 & 1.40	16 99
393	1851.		
	December 5.	J. H. Butler & Co	$6 40
		W. H. Turner	160 28

1852.			
January	16.	Calder & Phillips	316 37
May	29.	A. Burgess & Son	154 06
June	21.	Alfred Packer	75 75
1851.			
September	15.	R. Waterman	29 00
1852.			
May	27.	J. A. Gowdey & Son	489 12
		Russell Miller	173 01
1851.			
January	19.	Caleb Chase	16 00
1852.			
February	23.	S. A. Briggs	104 26
		S. Richardson	98 99
1851.			
January	17.	Bailey & Mason	625 00
August		"	328 00
		Patrick Connelly	10 00
October	17.	John H. Potter	140 00
1852.			
January	30.	James Eames	171 07
January	21.	Fales & Jenks	140 00
		James H. Bicknell	228 00
1851.			
December	23.	Burr & Shaw	226 87
July	1.	Bingham & Peirce	250 00
		John Burns	77 57
December	22.	S. C. Coombs & Co	112 00
January	27.	J. S. Thornton & Co	20 52
May	27.	Lawrence Murray	52 50
January	20.	Halsey H. Maine	48 00
January	7.	Hezekiah Smith	83 81
March	22.	Nelson D. Alverson	53 16
December	6.	B. Williams	6 50
1852.			
February	13.	S. J. Watson	617 52
		Barker & Whitaker	210 17
1851.			
July	19.	Solomon W. Young	57 85
		Charles H. Franklin	17 37
		Hiram Hill	57 64
394 1851.			
		Bicknell & Skinner	$13 44
October	14.	James Moran	19 16
September	2.	John G. Whipple	15 00
		Asa Chilson	302 25
		Peter Manning ..... 25.00, 52.00 & 4.00	54 00
December		Freight-bills machinery	30 37
		Taunton Branch Co	123 92
		Railroad bills	69 64
		"	6 39
		Schooner Star, freight	28 32
		Railroad bills ..... 132.33 and 54.57	186 70
		Taunton Branch Co ..... 167.18 and 50	167 68
		Express	4 74
		Railroad freight-bills	134 03

	Drake's Express		9 75
	Atlantic De Laine Co		852 46
January	Labor-account at De Laine Mill, viz:		
	40.61, 80.96, 124.35, 70.39,		
	131.19, 64.67, 92.03, 91.40,		
	77.22, 111.83, 63.93, 120.33,		
	80.57, 133.25, 93.79, 111.32,		
	98.75, 114.37, 104.75, 120.67,		
	127.00, 125.12, 108.15, 128.05,		
	152.62, 174.33, 110.24, 117.09,		
	137.53, 136.25, 269.50, 127.32,		
	123.67, 32.12,		4,845 77
1851.			
July	O. Mason & Co		1,280 66
1852.			
March	" "		1,826 32
1851.			
November 14.	W. G. White		251 70
1851.			
	James C. Bucklin		4,615 33
	Bills paid by W. H. Parkhurst, trustee		2,857 32
	Atlantic De Laine Co		56 95
	" " " "		35 97
	" " " "		743 65
	" " " "		722 65
May 17.	B. Wood & Hall's bill		1,065 28
	G. H. & G. L. Wood		2 12
395 1851.			
	Daniel Hall		10 00
	Pierce & Luther		358 65
	" " "		1,572 82
	" " "		787 26
	Seekell, Durfee & Williams' contract		3,853 30
	Bancroft & Sellers		16,462 71
June 26.	Amoskeag Manufacturing Company		25,638 00
	" " "		4,015 87
	Bancroft & Sellers		322 17
	Narragansett Brick Company		11,434 15
September 27.	Lewin & Fisk		9,217 26
	" " "		430 00
	" " "		373 84
	" " "		237 30
	" " "		288 66
	" " "		497 05
	" " "		2,858 17
	Martin A. Snow		7,097 33
	Calder & Phillips		70 40
	Barker & Whitaker		221 67
	C. B. Manchester		92 00
	" "		5 50
	Coggeshall & Barker		608 53
	Providence Tool Company		1,532 07
	P. Grinnell & Sons		540 47
	Henry A. Denny & Son		4,451 00
	" " " " "		38 23
	N. G. Thom		5,428 59

Duties on machinery	4,680 31
Josephus Baldwin	1,843 18
" "	1,464 63
Elisha Durfee	3,441 34
Providence Steam and Gas Pipe Co	5,949 91
Albert Dailey	12,388 69
	$178,370 45
John Kendrick, 10 notes	4,241 00
	182,611 45
Manchester & Hopkins	530 70

396 [XX.]—*Filed Eebruary* 28. 1870.

The above-named complainant respectfully moves the master that he order the defendants to render and produce before him a full, true, particular, and detailed statement of the results of the business of the Atlantic De Laine Company for and during the year 1868, and the year 1869, and down to the present time; and also a statement of the present debts and liabilities of said company, setting forth the amount due each person, copartnership, or company, and also a statement of the present assets of said company, and of what the same consist.

By her solicitor,

JAMES H. PARSONS.

PROVIDENCE, R. I., *February*, 28, 1870.

MARCH 5, 1870.—Above motion assented to by respondents, not waiving, however, their original objection to motion "I," and the order of master thereon.

C. HART, *Master.*

[Y.]

(Copy.)

A meeting of the directors of the Atlantic De Laine Company was held at their office September 4th, 1868, at one o'clock p. m., pursuant to the following notice:

"PROVIDENCE, *September 1st*, 1868.

"There will be a meeting of the directors of the Atlantic De Laine Company at my office on Friday, the 4th instant, at 1 p. m., for the transaction of any business that may legally come before them."

Present—Josiah Chapin, Edwin Hoyt, Wm. Brenton Greene, Geo. W. Chapin.

Upon motion of Mr. Hoyt, which was seconded by Mr. Greene, it was

Voted and resolved, that whereas heretofore, from time to time with the knowledge and assent of the directors, the earnings of the
397 company, and its funds otherwise acquired, have been invested in lands, buildings, and machinery, and the like additions to the property of the company.

And whereas, though made with their knowledge and assent, the said investments have not been formally authorized by the board of directors at meetings regularly called and holden for that purpose: Now, therefore, it is

Voted and resolved, that each and all of such investments be, and the same are hereby, approved, ratified, and confirmed.

It was also

Voted and resolved, that whereas certain shares of the capital stock of this corporation purchased of A. Tucker, jr., and W. C. Chapin in December, 1862, were divided and distributed among the stockholders in June, 1864, as appears from the books of the corporation, now, therefore, it is

Voted and resolved, that such division and distribution be, and the same is hereby, approved, ratified, and confirmed.

Adjourned.

(Signed) GEO. W. CHAPIN, *Clerk.*

Copy of affidavit of Robert E. Northam.

I, Robert E. Northam, on oath, declare and say that on the first day of September, A. D. 1868, I notified Josiah Chapin, Edwin Hoyt, Wm. Brenton Greene, A. Tucker, W. C. Chapin, and Geo. W. Chapin, of the meeting of the directors of the Atlantic De Laine Company on the 4th of September, 1868, as follows:

I deposited in the post-office at Providence, R. I., a notice, of which the following is a copy:

PROVIDENCE, *September* 1, 1868.

There will be a meeting of the directors of the Atlantic De Laine Company at my office on Friday, 4th inst., at 1 p. m., for the transaction of any business which may legally come before them.

(Signed) GEO. W. CHAPIN, *Treasurer.*

Addressed to Edwin Hoyt, New York; Wm. Brenton Greene, New York; A. Tucker, Boston, Mass.; W. C. Chapin, Lawrence, Mass.

398 And I handed a similar notice to Josiah Chapin and Geo. W. Chapin, in the office of the company in Providence, on the same day.

(Signed) ROBERT E. NORTHAM.

Subscribed and sworn to February 1st, 1870, before me.

(Signed) ABRAHAM PAYNE,
Justice of the Peace.

[Z.]

(Copy.)

A special meeting of the Atlantic De Laine Company was held at their office in Providence, September 4th, 1868, at 1 o'clock p. m., pursuant to the following notice:

"PROVIDENCE, *September 1st*, 1868.

"There will be a meeting of the stockholders of the Atlantic De Laine Company, at their office in this city, on Friday next, September 4th, at 1 o'clock p. m., for the purpose of deciding whether they will confirm the acts of the directors heretofore had in the erecting of a new mill and other buildings, and in the purchase of lands, machinery, &c., &c., for the use and benefit of this corporation, using for the payment thereof the earnings and other funds of the corporation heretofore acquired, and for the transaction of any other business which may be lawfully brought before them.

(Signed) "JOSIAH CHAPIN,
"GEORGE W. CHAPIN,
"*Stockholders holding one-fifth of the shares of the capital stock.*"

A like notice of above was also issued, signed by the treasurer.

The president, Josiah Chapin, in the chair.

Present—Josiah Chapin, Edwin Hoyt, William Brenton Greene, George W. Chapin.

Nehemiah Knight was present by his proxy, Edwin Hoyt; W. C. Chapin was present by his proxy, George W. Chapin.

399 The following resolution, offered by Mr. Hoyt and seconded by Mr. Greene, was approved:

That whereas it appears from the statement of the treasurer and from the books of the company, that heretofore, from time to time, the earnings of the company, and its funds otherwise acquired, have been invested in lands, buildings, and machinery, and the like additions to the property of the company; and whereas, it appears from the statement of the directors and from their record, that said investments, though made with their knowledge and assent, were not previously formally authorized at meetings of the board of directors, regularly called and holden for that purpose, and that the same have this day been approved, ratified, and confirmed by the board of directors, at a meeting regularly called and holden: Now, therefore, it is

Voted and resolved, that each and all the investments of the earnings of this company, and of its funds otherwise acquired, heretofore made in buildings, and machinery, and the like additions to the property of the company, be, and the same are hereby approved, ratified, and confirmed.

It was also voted and resolved, that whereas certain shares of the capital stock of this corporation, purchased of A. Tucker, jr., and W. C. Chapin in December, 1862, were divided and distributed among the stockholders in June, 1864, as appears from the books of the corporation: Now, therefore, it is

Voted and resolved, that such division and distribution be, and the same is hereby, approved, ratified, and confirmed.

It was further voted and resolved, upon motion of Mr. Hoyt, which was seconded by Mr. Greene, that whereas George W. Chapin, acting as treasurer of this corporation, and in its name and behalf, did heretofore make, execute, and deliver two (2) certain deeds of real estate to Robert E. Northam—one deed, dated January 5, 1866, and recorded in book number 38, page number 224, of the record of North Providence for recording deeds of real estate, and one deed dated January 17th, 1866, and recorded in book number 38, page number 231, of the record of North Providence for recording deeds of real estate, to which said deeds reference may be had for a more particular account of the contents thereof: Now,

400 therefore, it is

Voted and resolved, that the said deeds, and each of them, be, and hereby are, approved, ratified, and confirmed.

Adjourned.

(Signed) GEORGE W. CHAPIN, *Clerk.*

Copy of affidavit of Robert E. Northam.

I, Robert E. Northam, on oath, declare and say that, on the first day of September, A. D. 1868, I notified William Brenton Greene, Edwin Hoyt, Nehemiah Knight, A. Tucker, Josiah Chapin, William Chapin, L. B. Frieze, and George W. Chapin, of the special meeting of the Atlantic De Laine Company, as follows: I deposited in the post-office at Providence, R. I., a notice, of which the following is a copy, to wit:

"PROVIDENCE, *September* 1, 1868.

"There will be a meeting of the stockholders of the Atlantic De Laine Company, at their office in this city, on Tuesday next, September 4th, at one (1) o'clock p. m., for the purpose of deciding whether they will confirm the acts of the directors heretofore had in the erecting a new mill and other buildings, and in the purchase of lands, machinery, &c., &c., for the use and benefit of this corporation, using for the payment thereof the earnings and other funds of the corporation heretofore acquired, and for the transaction of any other business which may be lawfully brought before them.

(Signed) "JOSIAH CHAPIN,
"GEORGE W. CHAPIN,
" *Stockholders holding one-fifth of the shares of the capital stock.*

"Addressed to WILLIAM BRENTON GREENE, New York; EDWIN HOYT, New York; NEHEMIAH KNIGHT, New York; A. TUCKER, Boston, Mass.; L. B. FRIEZE, Providence, R. I.; W. C. CHAPIN, Lawrence, Mass.

"And a similar notice to Josiah Chapin and George W. Chapin, in the office of the company in Providence, on the same day.

(Signed) "ROBERT E. NORTHAM."

Subscribed and sworn to February 1st, A. D. 1870, before me.

(Signed) ABRAHAM PAYNE,
Justice of the Peace.

401 [AA.]—*Filed April 9th*, 1870.

Stockholders—January 1st, 1853.

Hill, Carpenter & Co.,	30 shares	paid,	$30,000 00
Hoyt, Tillinghast & Co.,	25 "	"	25,000 00
Hacker, Lea & Co.,	25 "	"	25,000 00
Globe Printing Co.,	25 "	"	25,000 00
C. T. James,	113 "	"	113,000 00
Dodge, Tucker & Co.,	15 "	"	15,000 00
Day, Owen & Co.	3 "	"	3,000 00
N. P. Bartlett,	1 "	"	1,000 00
Harrison & Co. has paid on account their subscription...			495 53
			$237,495 53

It will be seen by the above that all the stockholders had paid their subscriptions in full excepting C. T. James and Harrison & Co., who had failed.

I append a copy of H. & Co.'s stock-account, by which it will be seen that the only payment by them was $500 in cash, all the time-drafts being protested and paid by us, with $4.47 expenses thereon.

This explains why the item of capital stock was $237,495.53.

Harrison & Co., stock-account, January 1st, 1853.

1851.		CR.	
April 15.	By our draft 6 mos., this date		4,000 00
15.	" " " 6 " " "		3,500 00
June 12.	" " " 6 " " "		1,000 00
12.	" " " at sight		500 00
			$9,000 00

DR.

Oct.	24.	For paid their acceptance due 15th to 18th inst..	$4,000 00
	24.	" " protest and postage	2 10
Nov.	26.	" " their acceptance, due 15th to 18th inst..	3,500 00
Dec.	27.	" " " " " 12th " 15th " ..	1,000 00
	27.	" " protest and postage	2 37
	31.	" amount forward	495 53
			$9,000 00

GEO. W. CHAPIN.

402 The stockholders in the Atlantic De Laine Company, at the date of the filing of the account of respondents, November 17th, 1868, are as follows, each holding the number of shares set opposite his name:

George W. Chapin	102	shares.
Edwin Hoyt	87	"
Nehemiah Knight	34	"
Wm. Brenton Greene	30	"
Wm. C. Chapin	23	"
Josiah Chapin	12	"
A. Tucker	12	"

GEO. W. CHAPIN.

[BB.]—*Filed April 13th*, 1870.

The defendants object to the accounts as filed by the complainant under the order of the master as incomplete, imperfect, and insufficient, and not in accordance with the decree of the court entered November 25th, 1867.

And these defendants move the master for an order upon the complainant to file a more complete, perfect, and sufficient account.

And especially that she file a particular and detailed statement of the items which make up the sum $79,793.56, charged in the account heretofore filed by her as for work and materials furnished in addition to those called for by contract, giving the amount of each item, and what it was paid for, and to whom it was paid.

By their solicitor,

ABRAHAM PAYNE.

Above motion assented to by complainants, and order made accordingly.

C. HART, *Master.*

403 [CC.]—*Filed April 9th*, 1870.

The complainant in the above-entitled suit, in response to the order of the master, made on motion of the defendants, that she file a more complete and sufficient account, and especially that she file a particular and detailed statement of the items charged in her account heretofore filed for work and materials furnished, in addition to those called for by the contract, &c., says:

That the items which made up the amount claimed as due the estate of Charles T. James for work and materials furnished in addition to

those called for by the contract, &c., are fully set forth in the statement accompanying exhibit marked "W," filed with the master on the second day of December, A. D. 1869. The amount thereof, as appears from said Exhibit W, exceeds that appearing in the account filed May 5th, 1858, marked "Exhibit D." The said amount in the last-named account was taken in gross from a memorandum prepared, as she is informed and believes, for the use of counsel in the argument of said cause in November, 1861. The items appearing in the statement accompanying Exhibit W were taken from vouchers of the building account of the Atlantic De Laine Mill belonging to the late Charles T. James, and said statement was prepared from such vouchers by Mr. John R. Balch, the accountant heretofore appointed by the master. The vouchers had been in the custody of her counsel since the decease of her intestate, and have been submitted to the inspection and examination of the defendants.

In respect to the items appearing on the debtor side of said account, marked "D," where amounts are not given, she says that she was unable to state the same when said account was filed, and cannot fully complete the said account until the account of said defendants from January 1st, 1868, to the present time shall have been returned, in accordance with the order of the master.

So far, however, as she can now complete her accounts, she states the same as follows:

404	To balance due Feb. 23d, 1853, (see Exhibits D and W)	$262,761 45
	To interest on same to date of master's report	
	" 150 shares of capital stock, at par value	150,000 00
	" $\frac{150}{274}$ of gain in 1855	16,414 32
	" interest from Jan. 1st, 1856, to date of report	
	" $\frac{150}{274}$ of gain in 1856	23,006 95
	" interest from Jan. 1st, 1857, to date of report	
	" $\frac{150}{274}$ of gain in 1857	2,295 75
	" interest from Jan. 1st, 1858, to date of report	
	" $\frac{150}{274}$ of gain in 1858	23,439 50
	" interest from Jan. 1st, 1859, to date of report	
	" $\frac{150}{274}$ of gain in 1859	58,461 00
	" interest from Jan. 1st, 1860, to date of report	
	" $\frac{150}{274}$ of gain in 1860	53,823 74
	" interest from Jan. 1st, 1861, to date of report	
	" $\frac{150}{274}$ of gain in 1861	59,222 83
	" interest from Jan 1st, 1862, to date of report	
	" $\frac{150}{274}$ of gain in 1862	208,482 00
	" interest from Jan. 1st, 1863, to date of report	
	" $\frac{150}{274}$ of gain in 1863	175,586 54
	" interest from Jan. 1st, 1864, to date of report	
	" $\frac{150}{274}$ of gain in 1864	61 009 56
	" interest from Jan. 1st, 1865, to date of report	
	" $\frac{150}{274}$ of $231,371.65 paid stockholders Oct. 10th, 1861	126,663 00
	" amount received from Warwick farm	5,786 79
	" interest from March 2d, 1853, to date of report	
	" amount received from Cannelton Co.'s notes	21,000 00
	" interest from March 2d, 1853, to date of report	

LUCINDA JAMES,
Administratrix.

E. & O. E.

Sworn to before me this 13th day of April, 1870.

C. HART, *Master.*

405 [DD.]—*Filed April* 21, 1870.

The complainant above named respectfully represents: That her case in the opening before the master was closed some time since; that she was, after having requested the defendants to proceed, notified that they would do so at a meeting to be holden on March 29, 1870; that at said meeting a motion which she had been previously notified would be formally made was withdrawn, and no progress was made, but delay was granted, in order that counsel for defendants might confer for the purpose, as was stated at said meeting, of so preparing their case that the same might proceed with as little delay as possible; that on the 9th day of April, at the next succeeding meeting before the master, the motion BB, that the complainant file the items of her account, &c., was made; that said complainant immediately responded thereto, filing and making oath to the account CC on Wednesday, April 12, 1870, furnishing copies of the same to said defendants on the same day; that said defendants were, on that day, and have since been, requested to proceed with their case before the master, and to complete the same, but have failed and neglected so to do.

Wherefore the said complainant respectfully moves the master for a peremptory order on said defendants that they proceed forthwith to complete their case before him, and, upon their failure or neglect to do so, that he proceed to make up his report.

By her solicitor, JAMES H. PARSONS.

PROVIDENCE, *April* 21, 1870.

Motion assented to by respondents, and order accordingly.

C. HART, *Master.*

406 [EE.]—*Filed April* 22, 1870.

The respondents move that the complainant may be required to appear before the master on Thursday, April 28th, A. D. 1870, at 3 o'clock p. m., and that the respondents may then and there have an opportunity to examine the complainant touching the matters in controversy in this suit.

By their solicitor, A. PAYNE.

Above motion assented to by complainant, and order accordingly for complainant to appear April 28th, 3 p. m., complainant asking for an earlier day.

C. HART, *Master.*

[FF.]—*Filed May* 23, 1870.

The above-named complainant respectfully represents to the master that in the preparation and presentation of evidence concerning the accounts heretofore filed by her, she had expected and intended to have made use of a statement of the cost of the Atlantic De Laine Mill, prepared for and under the immediate direction of the late Charles T. James, and the testimony touching the same, its preparation, and the items thereof; that although diligent and careful search was made for the same, it could not be found, and it was supposed to have been lost;

that since the defendants commenced putting in their testimony said statement has been discovered; that the same is material and necessary in said cause, and she respectfully moves that she may put in evidence concerning said statement, its preparation, and the items thereof, before the master.

By her solicitor, JAMES H. PARSONS.

I, James H. Parsons, on oath do say that I have personal knowledge of the fact that one Wm. J. Harris, during the life-time of Charles
407 T. James, prepared for him, and under his direction, an account of the cost of the Atlantic De Laine Mill, and that said account had been copied or duplicated, the duplicate having been made up in a regular book of account. That at the time the account of Mrs. James was first filed by the master I made diligent search for said papers and book, assisted by many persons, and have continued said search from time to time since. That, failing wholly to find either, I was forced to close the testimony on behalf of the complainant without putting into the case the said account or the evidence of the book-keeper who prepared it, except as to his recollection, unsupported by the papers themselves to assist it; that within ten days I have, in carefully searching among old papers relating to the affairs of Gen. James, discovered the original account as prepared by Mr. Harris, which had been packed away with the original of the assignment made by him; that I deem the evidence in this matter material to the complainant's case, particularly as relating to the items of extra work claimed as due outside of the contract; and that if I had been able to have had the said account, I should have introduced it with the testimony of Mr. Harris concerning it before closing the complainant's testimony.

JAMES H. PARSONS.

Motion granted.

Atlantic De Laine Company.—Bills payable December 31st, 1852.

Total amount	$410,615 39

Atlantic De Laine Company.—Statement December 31st, 1852.

Due agents for advances on goods, viz:	
Hoyt, Tillinghast & Co	$34,398 02
Hacker, Lea & Co	31,296 37
Dodge, Tucker & Co	22,767 41
Day, Owen & Co	1,564 39
Total	$90,026 19
408 Due various persons on account, viz:	
Hill, Carpenter & Co	$41,542 46
Globe Printing Company	888 12
S. C. Blodgett	50 00
Thurston, Greene & Co	399 56
George W. Chapin, trustee	8,524 30
Total	$51,404 44
Capital stock, viz:	
Hoyt, Tillinghast & Co	$25,000 00

Hacker, Lea & Co	25,000 00
Globe Printing Company	25,000 00
Hill, Carpenter & Co	30,000 00
Charles T. James	113,000 00
Dodge, Tucker & Co	15,000 00
Day, Owen & Co	3,000 00
N. P. Bartlett	1,000 00
Harrison & Co	495 53
Total	$237,495 53

DECEMBER 31ST, 1852.

Cost of real estate, cassimere department, and amount paid Charles T. James, contract-account.

Real estate		$13,140 60
Construction		40,250 33
Charles T. James, contract-account		256,615 11
Total		$310,004 04
Cash and bills receivable on hand, viz:		
Cash		$5,326 96
E. R. Ballou & Co., note Nov. 12, '52, 6 mos	$2,757 96	
Treasurer school district No. 8, North Providence, Dec. 1st, 1852, 12 mos	5,500 00	
		8,257 96
		$13,584 92

409 *Wool, cotton, and supplies at mill, December 31st, 1852.*

Wool	332,540 lbs., at $44.46	$147,823 96
Cotton	28,470 lbs., at 12.80	3,642 98
Stock in process		22,306 26
De laine account supplies		3,107 14
" " repairs		2,118 52
875 tons coal, at $5.48, and wood	coal, $4,795.00; wood, 32.75	4,827 75
Cassimere account supplies		1,724 70
" " repairs		399 90
" stock in process		7,554 57
Boarding-house and office furniture		2,000 00
		$195,505 78
Less bills unpaid		4,813 67
		$190,692 17

De laines and cassimeres on hand December 31st, 1852.

Hoyt, Tillinghast & Co	323 cases,	494,293 yds.
Hacker, Lea & Co	194 "	296,848[1] "
Dodge, Tucker & Co	182 "	275,485[3] "
Day, Owen & Co	36 "	48,872 "
At Globe Print Works		123,723 "
At the mill		53,211 "
		1,292,433

	De laines and De beges on hand:			
	Hacker, Lea & Co	43,925[1]		
	Hunt, Tillinghast & Co	11,093[1]		
	Globe Print Works	61,723[1]		
	At mill	3,014[1]		
			119,756	
			1,412,189 yds.	$147,734 30
410	Cassimeres:			
	Hacker, Lea & Co....65 pieces, 1,717[2] yds.			
	Hunt, Tillinghast & Co.....28 " 756[2] "			
			2,474 yds.	1,484 40
	At mill			298 04
				$149,516 74
	Wool, cotton, and supplies at mill			$190,692 17
	De laines and cassimeres on hand			149,516 74
				$340,208 91
	Cotton account			3,642 98
	Cassimere account			12,680 23
	De laine account			237,062 87
	Wool account			147,823 96
	De Laine Mill account			9,364 40
	At cost			$410,574 44
	As valued			340,208 91
	Balance			$70,365 53

Statement of liabilities Atlantic De Laine Compasy, January 1, 1868.

	Due Hoyt, Sprague & Co	$2,488,275 80
	" L. B. Frieze & Co	1,238 83
	" T. A. Randall & Co	1,747 84
	" E. A. Pabodie	1,484 00
	" J. M. Pendleton	90 75
	" G. W. Bond & Co	4,040 80
	" Shaw & Walker	1,541 25
	" G. W. Chapin	37 67
	" B. Bullock & Sons	1,957 96
	" Joseph Ripley & Son	1,255 92
	" Duncan, Sherman & Co	6,834 67
	" Paris Hill	1,254 65
	" United States	571 30
411	Due H. L. Aldridge	$3,038 38
	" Walter Brown & Co	1,164 14
	" Bills payable, (see sheet)	310,859 46
	" Unpaid bills and labor	37,569 55
	" Internal revenue	2,141 10
		$2,865,104 07

List of notes of Atlantic De Laine Company outstanding January 1st, 1868.

Note to—									
Albert T. Sheldon	July	1,	1867,	6	mos.,	due	Jan.	4, 1868,	$1,600 00
B. M. Jackson & Co	Sept.	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	"	7,	"	4	"	"	"	10, "	5,000 00
"	Oct.	5,	"	4	"	"	Feb.	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
"	"	5,	"	4	"	"	"	8, "	5,000 00
Manchester, Hopkins & Co	"	14,	"	4	"	"	"	17, "	6,000 00
L. M. Blodgett	Aug.	20,	"	6	"	"	"	20, "	10,000 00
Manchester, Hopkins & Co	Oct.	4,	"	5	"	"	Mar.	17, "	6,738 00
H. A. Hidden	July	15,	"	8	"	"	"	18, "	25,521 46
B. M. Jackson & Co	Sept.	16,	"	6	"	"	"	19, "	5,000 00
"	Nov.	18,	"	4	"	"	"	21, "	5,000 00
"	"	18,	"	4	"	"	"	21, "	5,000 00
"	"	18,	"	4	"	"	"	21, "	5,000 00
"	"	18,	"	4	"	"	"	21, "	5,000 00
"	"	18,	"	4	"	"	"	21. "	5,000 00
Geo. W. Butts	Sept.	23,	"	6	"	"	"	26, "	15,000 00
H. A. Hidden	July	24,	"	8	"	"	"	27, "	20,000 00
"	"	24,	"	8	"	"	"	27, "	20,000 00
412 Albert T. Sheldon	Oct.	1,	1867,	6	mos.,	due	April	4, 1868,	$2,000 00
Manchester, Hopkins & Co.	"	14,	"	6	"	"	"	17, "	6,000 00
R. W. Greene	"	15,	"	6	"	"	"	18, "	5,000 00
Geo. W. Butts	"	28,	"	6	"	"	May	1, "	15,000 00
Sheldon Knight	May	4,	"	1	year,	"	"	4, "	4,000 00
Geo. W. Butts	Nov.	4,	"	6	mos.,	"	"	7, "	10,000 00
"	"	4,	"	6	"	"	"	7, "	10,000 00
R. W. Greene	Nov.	6,	"	6	"	"	"	9, "	5,000 00
"	"	6,	"	6	"	"	"	9, "	5,000 00
"	"	19,	"	6	"	"	"	22, "	4,000 00
B. M. Jackson & Co	"	20,	"	6	"	"	"	23, "	5,000 00
"	Dec.	3,	"	6	"	"	June	6, "	5,000 00
									$310,859 46

Bills receivable, December 31st, 1867.

Hill, Carpenter & Co.'s notes	$15,502 15
10 drafts on Hoyt, Sprague & Co., $5,000 each, due January 27 | 31, '53	50,000 00
Riverside Mills note, due Jan. 4, 1853	19,052 96
"	3,000 00
"	7,000 00
"	3,000 00
"	3,363 57
A. & W. Sprague Manufacturing Co.'s note	4,184 59
S. W. Baker's note	601 50
	$105,704 77

Atlantic De Laine Company, assets January 1st, 1868.

Construction-account			$1,774,522 55
Cash	$75,331 59		
Bills receivable, (see sheet)	105,704 77		
Riverside Mills	21,800 70		
A. H. Chaffee	31 84		
Smith & Aldrich	4,941 32		
Norwich Woolen Company	54 00		
G. M. Bayley	3,752 31		
Wm. Barbour	3,000 00		
413 Cotton at mill	13,300 62		
Wool at mill	64,218 16		
Stock in process	96,948 84		
Supplies at mill	98,973 77		
Cotton cloths	11,467 28		
Coal at Manchester, Hopkins & Co	18,738 00		
Worsted cloth at mill, exclusive of de laines,	76,995 28		
De laines at mill and at A. & W. Sprague's	446,625 79		
Worsted goods in agents' hands	556,856 56		
Worsted braid in agents' hands	40,382 65		
Cotton cloths in agents' hands	21,074 40		
Insurance	6,524 35		
Stock in P. & N. Y. S. S. Co	6,912 00		
			1,459,017 70
			$3,448,156 78

MEM. The cost of the first mill was reduced, as per books, from $491,281.71 to $300,000, viz:

Charged off to profit and loss, Dec. 31, 1858		$64,541 79
Dec. 31, 1859		126,740 12
(See book, page 31.)	Total	$191,281 91

Bills payable December 31st, 1851.

	Due 1852.		
January	5.	Hoyt & Tillinghast	$5,000 00
		Hacker, Lea & Co	5,000 00
	18.	Hill, Carpenter & Co	5,000 00
	22.	" "	5,000 00
February	2.	" "	1,000 00
		" "	1,000 00
January	21.	Citizens' Union Bank	2,000 00
	30.	Bennett & Baker	992 73
February	9.	Hill, Carpenter & Co	3,000 00
	15.	" "	2,000 00
	19.	" "	5,000 00
	19.	" "	5,000 00
	24.	" "	5,000 00
	29.	" "	10,000 00
414	February 7.	Joseph Smith	$1,000 00
	13.	John M. Herring	500 00
	14.	Thurston, Greene & Co	3,000 00

	16.	American Bank	3,000 00
	17.	Carpenter & Vermilye	2,611 93
	17.	Hoyt & Tillinghast	184 47
	19.	Evarts & Co	1,600 00
	25.	T. Whitaker & Co	500 00
March	3.	Bennett & Baker	1,106 44
February	4.	"	373 68
	10.	Albert Dailey	498 45
	4.	Hill, Carpenter & Co	4,136 35
March	2.	Dodge, Tucker & Co	3,000 00
	3.	Ballou & Hall	2,339 90
	4.	Hill, Carpenter & Co	4,000 00
	9.	" "	10,000 00
	23.	" "	5,000 00
	7.	John M. Herring	756 01
	15.	Thurston, Greene & Co	2,182 26
	13.	American Bank	2,000 00
	4.	Bancroft & Sellers	500 00
	4.	"	500 00
	4.	"	500 00
	18.	"	500 00
	18.	"	424 15
	18.	Ray Clapp	224 90
	23.	Hill, Carpenter & Co	1,750 00
	23.	Globe Printing Co	1,750 00
	25.	Joseph Smith	690 11
	21.	Bennett & Baker	918 28
	4.	E. P. Mason & Co	1,574 67
April	16.	Albert Dailey	1,000 00
	16.	"	900 00
	18.	Hoyt & Tillinghast	1,273 19
	26.	Hacker, Lea & Co	2,244 0
	27.	" "	2,000 00
	27.	Hoyt & Tillinghast	2,000 00
	23.	Quinnebaug Co	1,259 12
	23.	Hill, Carpenter & Co	5,214 12
	29.	" "	2,890 10
	18.	Dodge, Tucker & Co	5,000 00
415 April	18.	Hoyt & Tillinghast	85,000 00
	28.	"	5,000 00
	24.	Hacker, Lea & Co	5,000 00
	4.	Hoyt & Tillinghast	3,000 00
	4.	Hacker, Lea & Co	3,000 00
	5.	Thurston, Greene & Co	1,639 25
	14.	Curry & Potter	925 85
	9.	T. Whitaker & Sons	339 00
	13.	Hacker, Lea & Co	2,500 00
	13.	Hoyt & Tillinghast	2,500 00
	14.	American Bank	3,000 00
	44.	Manufacturers' Bank	3,000 00
	23.	Dodge, Tucker & Co	3,250 00
	9.	Hartwell, Dudley & Co	387 83
	7.	G. & D. Taylor & Co	215 72
	13.	Cornett & Nightingale	252 12
	20.	Barker & Whitaker	693 70
	13.	A. F. Adie	849 32

	4.	Albert Dailey	644	14
May	4.	Dodge, Tucker & Co	5,500	00
	6.	Hacker, Lea & Co	5,500	00
	4.	Hoyt & Tillinghast	5,500	00
	8.	Hill, Carpenter & Co	4,000	00
	15.	Hacker, Lea & Co	5,000	00
	20.	Hoyt & Tillinghast	5,000	00
	20.	Hacker, Lea & Co	5,000	00
	18.	Dodge, Tucker & Co	5,000	00
	26.	" "	3,000	00
	27.	Hoyt & Tillinghast	5,000	00
	18.	" "	5,000	00
	4.	Hacker, Lea & Co	5,000	00
	27.	" "	5,000	00
	29.	" "	3,500	00
	29.	Hoyt & Tillinghast	3,500	00
	31.	" "	3,000	00
June	2.	" "	4,000	00
May	23.	Hacker, Lea & Co	4,000	00
June	1.	" "	4,000	00
May	23.	Dodge, Tucker & Co	4,500	00
	18.	E. C. Bates & Co	649	11
	15.	W. A. Robinson & Co	1,187	55
416	June 18.	Dodge, Tucker & Co	$5,000	00
	22.	" "	5,000	00
	13.	Hacker, Lea & Co	5,000	00
	29.	Hoyt & Tillinghast	5,000	00
	23.	" "	5,000	00
	11.	" "	4,000	00
	29.	Hacker, Lea & Co	5,000	00
	23.	" "	5,000	00
	11.	Dodge, Tucker & Co	4,500	00
	4.	Hoyt & Tillinghast	5,000	00
	4.	Hacker, Lea & Co	7,000	00
	4.	Dodge, Tucker & Co	5,000	00
	5.	" "	1,700	00
	8.	Hoyt & Tillinghast	4,000	00
	11.	" "	1,200	00
	8.	Hacker, Lea & Co	2,000	00
	8.	Dodge, Tucker & Co	3,000	00
	15.	Hacker, Lea & Co	1,500	00
	19.	" "	1,250	00
	19.	" "	1,250	00
	23.	Hoyt & Tillinghast	4,800	00
	25.	Arcade Bank	9,500	00
	29.	Thurston, Greene & Co	2,007	21
	18.	A. D. & J. Y. Smith	238	41
	26.	Dodge, Tucker & Co	1,000	00
	27.	" "	1,500	00
	20.	Orray Taft	1,152	99
May	19.	Calder & Phillips	369	86
January	2.	John Miller	202	39
			$366,110	31

Bills payable December 31st, 1852.

Due 1853.			
January	5.	Hill, Carpenter & Co	$2,000 00
		" "	2,000 00
		" "	5,000 00
	6.	Hoyt, Tillinghast & Co	5,000 00
	5.	North Kingston Bank	2,000 00
417 January	8.	Hacker, Lea & Co	$5,000 00
	9.	Hill, Carpenter & Co	10,000 00
	10.	" "	5,000 00
	11.	" "	5,000 00
	16.	" "	6,000 00
	18.	" "	5,000 00
	22.	" "	5,000 00
	24.	" "	5,000 00
	22.	" "	4,000 00
	29.	" "	5,000 00
	31.	" "	5,000 00
February	1.	" "	5,000 00
	3.	" "	5,000 00
January	16.	D. Ballou & Co	4,145 88
	55.	O. Taft & Co	1,254 75
	31.	Bennett & Baker	1,285 41
	18.	American Bank	3,000 00
	18.	Manufacturers' Bank	3,000 00
	18.	Bank of Commerce	3,000 00
February	7.	Hill, Carpenter & Co	5,000 00
	5.	" "	5,000 00
	6.	" "	10,000 00
	10.	" "	3,000 00
	10.	" "	5,000 00
	12.	" "	5,000 00
	15.	" "	5,000 00
	17.	D. Ballou & Co	4,145 88
	20.	Hill, Carpenter & Co	6,000 00
	24.	" "	5,000 00
	30.	" "	5,000 00
March	3.	" "	5,000 00
February	22.	Union Bank	1,000 00
	17.	American Bank	3,000 00
	17.	Bank of Commerce	3,000 00
	17.	Manufacturers' Bank	3,000 00
	18.	Bennett & Baker	1,146 64
March	5.	Hill, Carpenter & Co	5,000 00
	8.	" "	5,000 00
	14.	" "	8,000 00
	30.	" "	10,000 00
	20.	Wm. A. Robinson & Co	1,328 53
	4.	Albert Dailey	949 04
418 March	14.	American Bank	$3,000 00
	14.	Manufacturers' Bank	3,000 00
	14.	Bank of Commerce	3,000 00
	14.	Bennett & Baker	1,193 21
	29.	" "	1,192 98
	22.	Barker, Whitaker & Co	480 75

	31.	Earl P. Mason & Co	2,061 29
April	4.	Hill, Carpenter & Co	3,150 45
	10.	" "	5,000 00
	12.	Thurston, Greene & Co	1,000 00
	14.	Hacker, Lea & Co	5,000 00
	14.	Hoyt, Tillinghast & Co	5,000 00
	28.	Lime Rock Bank	5,000 00
	25.	Tiverton Bank	2,000 00
	15.	Hill, Carpenter & Co	5,000 00
	20.	" "	5,000 00
	15.	E. B. Ballou	584 50
	14.	A. F. Adie	1,190 96
	13.	American Bank	1,500 00
	13.	Manufacturers' Bank	1,500 00
	13.	Bank of Commerce	1,500 00
May	1.	Wm. Mason & Co	1,913 45
	4.	Hill, Carpenter & Co	5,000 00
	8.	" "	5,000 00
	18.	Hacker, Lea & Co	5,000 00
	21.	Hoyt, Tillinghast & Co	5,000 00
	22.	James B. Hoskins	2,000 00
	22.	" "	3,000 00
	18.	Dodge, Tucker & Co	5,000 00
	20.	Hill, Carpenter & Co	5,000 00
	25.	" "	5,000 00
	29.	" "	5,000 00
	6.	" "	5,000 00
	10.	" "	5,000 00
	7.	Quinnebaug Co	2,338 10
	20.	Globe Printing Co	2,000 00
June	4.	Hill, Carpenter & Co	5,000 00
	6.	Hoyt, Tillinghast & Co	5,000 00
	9.	Hacker, Lea & Co	5,000 00
	9.	Dodge, Tucker & Co	5,000 00
	16.	Hacker, Lea & Co	6,000 00
	19.	Hill, Carpenter & Co	5,000 00
419 June	23.	Hill, Carpenter & Co	$5,000 00
	26.	" "	5,000 00
	30.	" "	5,000 00
	23.	" "	7,500 00
	25.	Hoyt, Tillinghast & Co	3,000 00
	26.	Dodge, Tucker & Co	6,000 00
	27.	Thurston, Greene & Co	3,000 00
	30.	Hoyt, Tillinghast & Co	5,000 00
	30.	Hacker, Lea & Co	6,000 00
July	3.	Globe Printing Co	2,000 00
	3.	" " "	2,158 14
June	11.	Wm. J. King & Co	3,095 43
July	10.	Globe Printing Co	1,500 00
	10.	" " "	1,500 00
			$410,615 39

Bills payable December 31st, 1853.

Due 1854.			
January	8.	Dodge, Tucker & Co	$5,000 00

	14.	" "		3,500 00
	9.	Hoyt, Tillinghast & Co		5,000 00
	16.	" "		5,000 00
	8.	Hacker, Lea & Co		5,000 00
	14.	" "		3,000 00
	14.	" "		3,000 00
February	3.	Hoyt, Tillinghast & Co		5,000 00
January	21.	Hacker, Lea & Co		3,000 00
	28.	Dodge, Tucker & Co		3,000 00
February	1.	" "		4,000 00
January	24.	Manufacturers' Bank		2,000 00
	18.	Bank of Commerce		2,500 00
	18.	Manufacturers' Bank		2,500 00
	18.	American Bank		3,000 00
	8.	Bennett & Baker		960 17
	22.	"		1,171 79
	6.	Hill, Carpenter & Co		4,805 83
	25.	Wm. Mason & Co		3,000 00
420	February 18.	Globe Printing Co		$2,500 00
	7.	Hacker, Lea & Co		5,000 00
	14.	" "		5,000 00
	23.	" "		5,000 00
	25.	" "		3,000 00
	11.	Hoyt, Tillinghast & Co		5,000 00
	14.	" "		5,000 00
	23.	" "		5,000 00
	25.	" "		5,000 00
	4.	Dodge, Tucker & Co		5,000 00
	9.	" "		5,000 00
March	3.	Hoyt, Tillinghast & Co		5,000 00
	3.	Hacker, Lea & Co		5,000 00
	3.	Dodge, Tucker & Co		5,000 00
February	4.	Bennett & Baker		984 08
	17.	Bank of Commerce		2,000 00
	17.	Manufacturers' Bank		2,000 00
	17.	American Bank		3,000 00
	25.	Wm. Mason & Co		3,000 00
March	1.	Rice & Denny		1,723 74
February	19.	A. F. Adie		708 81
	8.	Hill, Carpenter & Co		2,000 00
March	25.	" "		1,100 65
	11.	" "		1,880 17
	11.	" "		1,880 18
April	2.	" "		1,594 81
March	9.	" "		3,000 00
	15.	" "		3,000 00
	19.	" "		3,000 00
	13.	American Bank		3,000 00
	13.	Manufacturers' Bank		2,500 00
	13.	Bank of Commerce		2,000 00
	15.	W. A. Robinson & Co		838 45
	5.	Hacker, Lea & Co		2,500 00
	8.	" "		3,000 00
	24.	Coventry Bank		3,000 00
	10.	"		7,000 00
April	3.	Providence Machine Shop		1,141 65

	7.	Hill, Carpenter & Co	2,009	47
	6	" "	5,000	00
	7.	Royal Chapin & Son	2,000	00
421	April 10.	American Bank	$3,000	00
	10.	Bank of Commerce	3,000	00
	9.	Hill, Carpenter & Co	1,000	00
	9.	Union Bank	2,000	00
	11.	E. P. Mason & Co	611	96
	13.	Hacker, Lea & Co	5,000	00
	13.	Hoyt, Tillinghast & Co	4,500	00
	15.	Providence Canal Bleaching Co	836	24
	18.	Providence, D., B. and C. Co	440	51
	18.	Hill, Carpenter & Co	1,200	00
	18.	" "	2,500	00
	18.	" "	2,500	00
	24.	" "	1,600	00
	25.	" "	2,000	00
	25.	P. Whitin & Sons	2,500	00
	25.	" "	2,500	00
	25.	" "	2,490	16
	27.	Wm. Mason & Co	1,150	05
May	10.	Hill, Carpenter & Co	3,000	00
	6.	B. Ballou & Co	4,000	00
	6.	" "	3,000	00
	6.	" "	833	24
	17.	Hacker, Lea & Co	5,000	00
	17.	Dodge, Tucker & Co	5,000	00
	21.	Hoyt, Tillinghast & Co	5,000	00
	24.	W. H. Reynolds	480	34
June	1.	Thos. Aldrich	650	72
	2.	Royal Chapin & Son	2,000	00
	5.	Hacker, Lea & Co	2,500	00
	5.	Dodge, Tucker & Co	2,500	00
	8.	Hill, Carpenter & Co	4,000	00
	8.	" "	5,000	00
	9.	Hoyt, Tillinghast & Co	5,000	00
	12.	Hacker, Lea & Co	5,000	00
	12.	Orray Taft & Co	5,000	00
	13.	Hill, Carpenter & Co.	5,000	00
	13.	G. P. Co	2,892	84
	13.	H., C. & Co	2,892	84
	13.	G. P. Co	600	00
	15.	D., T. & Co	2,500	09
	16.	A. D. Lockwood & Co	2,500	00
422	June 18.	H., C. & Co	$5,000	00
	19.	A. N. Beckwith	2,000	00
	19.	"	1,337	41
	20.	A. D. Lockwood & Co	3,200	00
	24.	D. T. & Co	6,000	00
	29.	H., L. & Co	3,000	00
	29.	Orray Taft & Co	1,000	00
July	2.	H., T. & Co	5,000	00
	16.	A. D. Lockwood & Co	1,323	93
	16.	H., C. & Co	10,607	14
	16.	H. & T	9,061	14
	16.	H., L. & Co	9,061	14

16.	G. P. Co	9,059	79
16.	D., T. & Co	5,303	37
		$387,932	62

Bills payable December 31st, 1854.

Due 1855.			
January	4.	Levalley, Lanphear & Co	$2,028 56
	6.	T., N. & Mills	5,000 00
	6.	H., L. & Co	7,500 00
	6.	H., T. & Co	8,000 00
	13.	W. S. Patten	5,000 00
	13.	T., N. & Mills	3,000 00
	13.	H., L. & Co.	5,000 00
	17.	Bank of Commerce	3,500 00
	17.	American Bank	3,500 00
	17.	Benjamin & Reynolds	2,200 00
	20.	H., T. & Co	4,000 00
	27.	H., Lea & Co	2,500 00
	27.	T., N. & Mills	2,000 00
	28.	H., C. & Co	1,500 00
	30.	Day & Chapin	1,799 98
	30.	Orray Taft	7,407 84
February	3.	J. Worsley	600 00
	3.	H., C. & Co	5,000 00
	4.	H., T. & Co	5,000 00
423 February	4.	T., N. & Co	$5,000 00
	4.	Providence Machine Co	1,885 20
	6.	Bennett & Baker	1,125 56
	7.	"	1,460 79
	10.	"	1,397 25
	10.	H., T. & Co	3,000 00
	10.	T., N. & Co	3,000 00
	17.	H., T. & Co	5,000 00
	17.	H., L. & Co	4,500 00
	21.	H., C. & Co	2,500 00
	21.	H., C. & Co	4,000 00
	22.	W. A. Robinson & Co	706 34
	24.	H., L. & Co	3,500 00
	24.	H., T. & Co	5,000 00
	27.	H., C. & Co	3,000 00
	27.	H., C. & Co	3,000 00
	25.	H. Anthony	5,000 00
March	3.	H., C. & Co	2,000 00
	3.	H., C. & Co	3,000 00
	3.	H., L. & Co	2,500 00
	2.	T. Fuller	826 79
February	13.	Bennett & Baker	1,370 08
	14.	American Bank	3,500 00
	14.	Bank of Commerce	3,500 00
	16.	Bennett & Baker	1,083 67
	17.	"	890 45
	17.	Benjamin & Reynolds	2,200 00
	20.	Albert Dailey	861 66

	21.	Providence Canal Bleaching Co	314	32
	23.	Coventry Bank	7,000	00
March	1.	Wm. Mason & Co	1,828	71
	7.	H., T. & Co	3,000	00
	7.	H., L. & Co	2,500	00
	7.	P. Whitin & Sons	2,488	65
	7.	"	2,488	65
	11.	Bank of Commerce	3,750	00
	11.	American Bank	3,750	00
	12.	John Kendrick	710	63
	14.	H., T. & Co	6,000	00
	14.	H., L. & Co	6,000	00
	14.	T., N. & M	2,500	00
424 March	15.	B. I. Foundry	$435	42
	17.	Silver Spring Bleachery	582	47
	17.	Benjamin & Reynolds	2,300	00
	18.	H., L. & Co	1,500	00
	20.	Bennett & Baker	1,365	53
	17.	R. I. B. & C. Works	1,329	11
	28.	T., N. & M	3,000	00
	28.	H., L. & Co	5,000	00
	28.	H., T. & Co	3,500	00
	30.	T., N. & M	3,500	00
April	5.	H., C. & Co	3,000	00
	5.	H., C. & Co	2,000	00
	5.	H., T. & Co	3,000	00
	6.	H., C. & Co	2,000	00
	13.	H., C. & Co	2,500	00
	9.	American Bank	4,000	00
	8.	E. P. Mason & Co	1,667	32
	9.	Bank of Commerce	4,000	00
	16.	H., T. & Co	5,000	00
	17.	Benjamin & Reynolds	2,493	07
	17.	W. B. Spooner & Co	457	17
	19.	H., C. & Co	5,000	00
	20.	T., N. & M	6,000	00
	20.	Pierce & Bacon	3,500	00
	21.	H., L. & Co	2,000	00
	24.	H., C. & Co	2,500	00
	26.	H., L. & Co	4,000	00
	27.	H., T. & Co	4,000	00
	27.	Pierce & Bacon	3,500	00
	27.	"	3,651	70
May	1.	T., N. & M	5,000	00
	1.	H., T. & Co	5,000	00
	3.	Pierce & Bacon	3,500	00
	3.	H., C. & Co	2,000	00
	3.	Ward & Boot	231	31
	7.	William Dwight, treasurer	5,000	00
	7.	"	5,781	92
	11.	H., T. & Co	4,000	00
	11.	H., L. & Co	5,000	00
	16.	H., T. & Co	5,000	00
	20.	H., T. & Co	5,000	00
425 May	20.	Bradford & Taft	$2,000	00
	20.	"	600	80

	21.	T., N. & M	2,500 00
	24.	"	5,500 00
	24.	Manchester Print Works	2,467 05
	25.	A. F. Adie	302 77
	25.	H., L. & Co	4,500 00
	26.	H., T. & Co	3,500 00
	30.	H., T. & Co	3,000 00
	30.	H., L. & Co	4,000 00
June	4.	H., T. & Co	5,000 00
	8.	T., N. & M	5,000 00
	7.	H., L. & Co	11,000 00
	14.	H., L. & Co	5,650 00
	16.	"	7,500 00
	9.	H., T. & Co	5.000 00
	12.	"	5,000 00
	4.	H., C. & Co	10,607 14
	4.	H. & T	9,061 14
	4.	H., L. & Co	9,061 14
	4.	G. P. Co	9,059 79
	4.	D., T. & Co	5,303 37
	18.	H., T. & Co	6,000 00
	18.	E. P. M. & Co	1,361 90
	21.	T., N. & Co	3,000 00
	21.	H., L. & Co	4,500 00
	23.	H., L. & Co	2,500 00
	29.	T., N. & Co	2,000 00
	29.	H., L. & Co	3,000 00
	30.	"	3,500 00
July	2.	T., N. & Co	2,500 00
	2.	H., L. & Co	2,500 00
	3.	Day & Chapin	3,075 80
			$473,541 06

426 *Bills payable December 31st, 1855.*

Due.			
1856.			
January	2.	H. Remington	$986 30
	4.	S. S. Bleachery	609 73
	5.	Tucker, Newton & Mills	5,000 00
		Merchants' Bank	5,000 00
		W. F. Freeman	346 15
	9.	H., T. & Co	4,000 00
	12.	H., L. & Co	4,500 00
		T., N. & M	3,500 00
	13.	Bank of Commerce	3 000 00
		What-Cheer Bank	3,000 00
	14.	Bradford & Taft	1,000 00
		"	900 74
		H. Remington	816 56
	16.	American Bank	3,000 00
		H. Remington	738 68
	17.	"	926 04
	19.	H., T. & Co	4,000 00
		H., L. & Co	3,000 00

	20.	James M. Cross	848 70
		H. Remington	421 51
	26.	H., L. & Co	5,000 00
		T., N. & M	3,000 00
	28.	H., T. & Co	5,000 00
		E. D. Brigham & Co	3,820 37
February	2.	H., T. & Co	5,000 00
		H., L. & Co	5,000 00
		T., N. & M	6,000 00
	9.	H., L. & Co	4,000 00
		H., T. & Co	6,500 00
	11.	Bank of Commerce	3,500 00
		What-Cheer Bank	2,000 00
	13.	Siffkin & Ironside	1,000 00
		"	1,000 00
		"	1,000 00
		"	961 62
	15.	American Bank	3,000 00
	16.	T., N. & M	3,000 00
		H., T. & Co	5,000 00
427	February	H., L. & Co	$2,500 00
		G. W. C	474 87
	18.	G. W. Munroe	845 83
	19.	H., T. & Co	3,000 00
	21.	Wood & Low	2,031 33
	23.	T., N. & M	1,000 00
		H., L. & Co	8,500 00
		H., T. & Co	5,000 00
	25.	"	3,000 00
	28.	"	2,500 00
		H., L. & Co	2,500 00
March	1.	"	4,000 00
		H., T. & Co	5,500 00
	3.	H., L. & Co	2,500 00
	4.	Wm. H. Reynolds, agent	3,394 44
		Pawtucket Institution for Savings	3,487 93
	6.	H., T. & Co	2,500 00
		H., L. & Co	2,500 00
	8.	James M. Cross	517 28
		Bank of Commerce	3,000 00
		What Cheer Bank	2,000 00
	9.	Abbott & Saunders	903 09
		Geo. W. Munroe	838 52
		"	503 55
	11.	American Bank	3,500 00
	13.	H., T. & Co	1,500 00
		T., N. & M	2,500 00
		H., L. & Co	2,000 00
	14.	Geo. W. Munroe	542 86
	17.	S. S. Bleachery	1,387 00
	23.	Coventry Bank	7,000 00
	27.	H., T. & Co	4,000 00
		H., L. & Co	4,000 00
		T., N. & M	3 000 00
	30.	J. P. & J. M. Campbell	889 31
April	1.	E. P. Mason & Co	1,093 62

		4.	T., N. & M	2,000 00
			H., L. & Co	6,000 00
			H., T. & Co	4,500 00
		6.	Bank of Commerce	3,500 00
			What Cheer Bank	2,000 00
428	April	7.	Wm. H. Reynolds, agent	$1,274 92
			" "	2,000 00
			H., Lea & Co	4,000 00
		8.	American Bank	3,500 00
		11.	H., T. & Co	2,500 00
		12.	G. W. Bond & Co	1,142 75
			"	1,094 95
		18.	T., N. & M	4,000 00
			H., L. & Co	5,000 00
			H., T. & Co	2,500 00
		19.	Wm. H. Reynolds, agent	2,054 84
		21.	Abbott & Saunders	1,426 24
			A. C. & L. R. Chesborough	3,000 00
			" "	3,000 00
			" "	3,329 71
			R. I. B. & C. Works	471 41
		25.	H., T. & Co	3,000 00
			H., L. & Co	3,000 00
	May	1.	T., N. & M	1,000 00
		2.	"	3,000 00
			James M. Cross	1,250 56
			G. W. Bond & Co	279 63
			Augustus Hemenway	448 56
		3.	What Cheer Bank	2,000 00
			Bank of Commerce	3,500 00
		5.	Royal Chapin & Son	697 17
		8.	George W. Chapin	3,685 90
			T., N. & M	1,000 00
		12.	H., T. & Co	5,000 00
		15.	T., N. & M	3,000 00
			H., L. & Co	3,000 00
		20.	T., N. & Mills	3,000 00
		25.	James M. Cross	2,887 39
		29.	H., L. & Co	5,000 00
	June	4.	H., T. & Co	5,000 00
		6.	H., L. & Co	5,000 00
		8.	T., N. & M	2,000 00
		9.	"	2,000 00
			H., T. & Co	5,000 00
		11.	William H. Reynolds, agent	2,500 00
		13.	H., T. & Co	3,000 00
429	June		H., L. & Co	$5,000 00
		19.	James M. Cross	822 45
			"	1,001 41
		20.	H., L & Co	5,000 00
			Abbott & Saunders	1,282 96
		22.	William H. Reynolds, agent	2,500 00
		23.	H., T. & Co	4,000 00
			G. W. C	1,300 61
		29.	T., N. & M	2,500 00
		30.	Hacker, Lea & Co	5,000 00

July	2.	H., T. & Co	4,500 00
		H., C. & Co	10,607 14
		D., T. & Co	5,303 37
March	27.	S. Spring Bleachery	1,000 00
			$381,429 00

Bills payable December 31st, 1856.

Due 1857.			
January	4.	Tucker, Newton & Mills	$5,500 00
	5.	Hoyt, Tillinghast & Co	4,500 00
	4.	Hacker, Lea & Co	5,000 00
		Geo. W. Munroe	500 00
	10.	Tucker, N. & Mills	4,000 00
	12.	Henry Hall	2,970 58
	13.	R. A. Crafts & Co	5,000 00
	17.	Hacker, Lea & Co	2,500 00
	18.	Abbott & Saunders	1,000 00
		" "	1,000 00
	19.	R. A. Crafts & Co	2,500 00
	21.	H., T. & Co	5,000 00
		H., L. & Co	5,000 00
	24.	"	5,000 00
		H., T. & Co	4,000 00
		T., N. & Mills	2,000 00
		H., T. & Co	5,000 00
		Globe Printing Co	5,000 00
	25.	Samuel Merry	1,040 66
	27.	R. A. Crafts & Co	5,000 00
	29.	Geo. W. Chapin	3,701 12
430 January	31.	Hacker, Lea & Co	$1,000 00
		" "	3,000 00
		Hoyt, T. & Co	3,000 00
		" "	4,705 17
		G. P. Co	4,705 17
February	1.	Geo. W. Munroe	500 00
	2.	Hacker, L. & Co	3,706 67
		T., N. & M	3,825 40
	3.	R. A. Crafts & Co	8,000 00
	7.	H., T. & Co	5,000 00
		T., N. & M	2,000 00
		H., L. & Co	4,000 00
		"	1,000 00
	14.	"	4,000 00
		"	3,000 00
		H., T. & Co	3,000 00
		"	1,500 00
	17.	H., L. & Co	3,000 00
	21.	H., T. & Co	5,000 00
	21.	H., T. & Co	4,500 00
		T., N. & M	1,000 00
	28.	H., T. & Co	1,500 00
		H., L. & Co	1,500 00
		"	2,000 00

			H., T. & Co	2,000 00
			"	3,000 00
March		1.	H., L. & Co	5,000 00
		3.	H., T. & Co	3,000 00
		5.	H., L. & Co	3,000 00
			"	3,500 00
		7.	Abbott & Saunders	200 00
		8.	H., T. & Co	3,000 00
			"	2,500 00
		11.	"	3,000 00
			H., L. & Co	9,000 00
			T., N. & M	5,000 00
		13.	S. Spring Bleachery	1,787 17
		16.	H., T. & Co	4,000 00
		18.	Abbott & Saunders	700 00
			Hoyt, T. & Co	7,000 00
			T., N. & M	2,000 00
		25.	H., L. & Co	7,000 00
431	March		T., N. & M	82,500 00
		27.	J. & J. Murdock	601 90
			George W. Munroe	400 00
		30.	George W. Chapin	2,282 09
April		1.	H., T. & Co	4,500 00
		4.	"	3,000 00
			H., L. & Co	3,000 00
		9.	"	2,000 00
			H., T. & Co	3,000 00
			T., N. & M	4,000 00
		12.	S. S. Salisbury	870 31
		16.	T., N. & M	6,000 00
			H., L. & Co	3,000 00
		23.	H., T. & Co	4,000 00
		25.	George W. Munroe	400 00
May		6.	H., L. & Co	3,000 00
			H., T. & Co	3,000 00
			T., N. & M	4,000 00
		9.	H., T. & Co	2,000 00
		14.	H., L. & Co	2,500 00
			T., N. & M	2,000 00
		17.	"	3,000 00
			H., T. & Co	4,000 00
		20.	H., L. & Co	4,500 00
		23.	Abbott & Saunders	492 03
		25.	S. S. Bleachery	932 73
		27.	H., L. & Co	2,000 00
			S. S. Smith	642 06
June		4.	T., N. & M	3,000 00
			H., T. & Co	1,000 00
			H., L. & Co	3,000 00
		11.	H., T. & Co	2,000 00
		13.	"	5,000 00
		18.	T., N. & M	4,500 00
		25.	"	2,000 00
		29.	H., T. & Co	5,000 00
July		2.	"	2,500 00
			H., L. & Co	7,500 00

		T., N. & M	2,000 00
		H., C. & Co	10,607 14
			$335,070 20

432 *Bills payable December 31st, 1857.*

Due 1858.			
January	9.	H., T. & Co	$$8,000 00
		T., N. & Co	2,500 00
	15.	H., T. & Co	10,000 00
	16.	"	2,000 00
		"	2,500 00
		"	6,000 00
		T., N. & Co	1,000 00
	23.	"	5,000 00
		H., T. & Co	2,500 00
		T., N. & Co	3,000 00
	24.	H., T. & Co	5,000 00
	26.	Pierce & Bacon	4,465 09
		"	4,465 09
		H., T. & Co	2,500 00
	28.	John A. Taft	1,000 00
		"	628 90
		"	700 00
		S. & W. Foster & Co	2,486 87
	30.	T., N. & Co	2,500 00
February	3.	H., T. & Co	6,000 00
	6.	"	5,000 00
		H., L. & Co	5,000 00
		H., T. & Co	3,000 00
	7.	"	5,000 00
	13.	H., T. & Co	6,000 00
		T., N. & Co	1,000 00
		H., T. & Co	1,500 00
		T., N. & Co	9,500 00
	17.	H., T. & Co	5,000 00
	18.	W. B. Spooner & Son	386 80
	20.	H., T. & Co	6,000 00
		"	3,000 00
		"	3,000 00
		T., N. & Co	5,500 00
	21.	William Mason & Co	1,253 09
	27.	T., N. & Co	2,000 00
		H., T. & Co	2,000 00
		"	5,000 00
433	February	T., N. & Co	$8,000 00
	March 3.	H., T. & Co	1,500 00
	5.	William T. Mason & Co	4,375 50
	6.	Bay State Print-Works	1,156 95
		H., T. & Co	1,000 00
		"	5,000 00
		"	3,000 00
	13.	"	5,000 00
		"	7,000 00
		"	7,500 00

		T., N. & Co	5,000 00
		"	2,000 00
		"	2,500 00
	20.	H., T. & Co	2,500 00
		"	3,000 00
		T., N. & Co	2,000 00
		H., T. & Co	7,000 00
		"	2,500 00
		T., N. & Co	7,500 00
	21.	H., T. & Co	3,000 00
	24.	T., N. & Co	2,000 00
	26.	H., T. & Co	2,500 00
	27.	"	8,000 00
		T., N. & Co	2,500 00
		H., T. & Co	8,000 00
		"	10,000 00
	31.	E. P. Mason & Co	1,485 10
		H., T. & Co	4,000 00
April	2.	T., N. & Co	3,000 00
		H., T. & Co	7,000 00
		"	2,000 00
	4.	J. & W. Horrocks	3,315 73
	8.	H., T. & Co	2,000 00
		T., N. & Co	4,000 00
	9.	"	2,000 00
		H., T. & Co	4,000 00
	10.	"	5,000 00
		"	5,000 00
		T., N. & Co	2,500 00
		"	2,500 00
	15.	"	3,000 00
434	April	H., T. & Co	$3,000 00
		"	4,000 00
	19.	"	5,000 00
	22.	"	3,000 00
	24.	"	5,000 00
	29.	"	4,000 00
		T., N. & Co	3,000 00
May	1.	H., T. & Co	1,000 00
	5.	T., N. & Co	2,000 00
	6.	H., T. & Co	2,000 00
	8.	"	4,000 00
		T., N. & Co	2,000 00
	10.	"	2,000 00
		H., T. & Co	5,000 00
	12.	"	1,500 00
		T., N. & Co	2,000 00
	13.	H., T. & Co	2,000 00
	17.	"	5,000 00
		T., N. & Co	2,500 00
	19.	"	3,500 00
		H., T. & Co	4,000 00
	24.	T., N. & Co	1,500 00
	26.	"	2,000 00
	27.	Thurston, Gardner & Co	3,000 00
	31.	W. B. Spooner & Son	1,000 00

		" "	305 85
		H., T. & Co	2,000 00
June	2.	"	3,500 00
		T., N. & Co	2,000 00
	5.	H., T. & Co	6,500 00
	6.	"	4,000 00
		T., N. & Co	2,000 00
	7.	"	5,000 00
	14.	H., T. & Co	5,000 00
		"	1,000 00
	15.	Thurston, Gardner & Co	906 84
	17.	H., T. & Co	2,000 00
		T., N. & Co	1,000 00
	26.	H., T. & Co	5,000 00
July	1.	"	6,000 00
		T., N. & Co	2,000 00
435 July	4.	H., T. & Co	$4,000 00
	10.	"	4,000 00
		"	2,000 00
August	30.	T., N. & Co	1,000 00
September	6.	"	1,000 00
		H., C. & Co	10,607 14
			$447,038 95

Bills payable December 31st, 1858.

Due. 1859.			
January	1.	Harris, Hunt & Co	$2,881 83
	6.	L. D. Addison	16,362 02
	9.	T., N. & Co	5,000 00
		H., T. & Co	9,000 00
	15.	T., N. & Co	6,000 00
	18.	J. R. Wilder	1,515 85
	22.	H., T. & Co	11,500 00
		William Simpson	4,000 00
		"	4,000 00
		"	3,911 85
		T., N. & Co	3,000 00
	26.	H., T. & Co	10,000 00
	29.	"	5,000 00
		T., N. & Co	3,000 00
	30.	L. D. Addison	8,292 68
	31.	J. R. Wilder	10,000 00
February	4.	"	10,000 00
	5.	T., N. & Co	10,000 00
	7.	George W. Chapin	4,391 31
	8.	J. R. Wilder	2,192 14
	12.	H., T. & Co	5,000 00
		L. D. Addison	16,843 66
	14.	Saunders' Cotton-Mills	4,100 12
	19.	H., T. & Co	7,000 00
	21.	L. D. Addison	4,441 20
	26.	T., N. & Co	5,000 00
March	4.	A. Farnum	1,341 93

436	March		O. Taft & Co	$1,677 98
			William Simpson	4,000 00
			"	3,960 96
		5.	H., T. & Co	10,000 00
		11.	S. S. Salisbury	2,421 32
			"	2,420 33
			William Foster	3,800 00
			"	845 78
			"	1,041 94
			A. Farnum	2,000 00
			"	2,000 00
			R. M. Larned	1,064 80
			H., T. & Co	3,000 00
		16.	H., T. & Co	$8,500 00
			T., N. & Co	3,000 00
		18.	Alexander Farnum	1,341 93
			O. Taft & Co	1,677 98
		10.	H., T. & Co	8,000 00
		19.	"	7,000 00
		26.	"	5,000 00
			T., N. & Co	3,000 00
	April	2.	"	5,000 00
		4.	William Simpson	4,676 29
			"	4,676 30
			"	2,090 83
			T., N. & Co	3,000 00
		8.	H., T. & Co	2,000 00
		14.	"	5,500 00
			T., N. & Co	8,000 00
		21.	"	5,000 00
		23.	H., T. & Co	12,000 00
		28.	"	5,000 00
			T., N. & Co	4,000 00
		30.	"	5,000 00
	May	4.	"	7,500 00
		7.	H., T. & Co	9,000 00
		11.	"	8,000 00
			T., N. & Co	5,000 00
		14.	H., T. & Co	5,000 00
		18.	"	7,500 00
			T., N. & Co	5,000 00
437.	May	21.	H., T. & Co	$5,000 00
		25.	"	13,000 00
		28.	"	5,000 00
	June	1.	"	4,000 00
			T., N. & Co	5,000 00
		4.	"	2,500 00
		9.	"	2,000 00
			H., T. & Co	5,000 00
		11.	"	10,000 00
		16.	"	10,500 00
		23.	"	12,000 00
			T., N. & Co	5,000 00
		25.	"	7,000 00
		30.	H., T. & Co	10,000 00
	July	1.	"	6,000 00

May	4.	William Simpson	4,075 13
			$468,546 16

Bills payable December 31st, 1859.

Due 1860.			
January	4.	William Simpson	$5,000 00
		"	5,000 00
		"	5,600 48
	8.	H., S. & Co	10,000 00
		T., N. & Co	6,000 00
	14.	H., S. & Co	8,000 00
	21.	T., N. & Co	10,500 00
	27.	Merchants' Bank	4,000 00
	28.	T., N. & Co	6,000 00
February	4.	William Simpson	4,000 00
		"	4,935 38
	11.	H., S. & Co	5,000 00
		Corliss Steam-Engine Co	2,000 00
		" "	2,000 00
	18.	T., N. & Co	5,000 00
		H., S. & Co	5,000 00
	25.	"	10,000 00
438	March 1.	O. Taft & Co	$12,450 66
	3.	T., N. & Co	10,000 00
	4.	William Simpson	4,000 00
		"	3,215 98
	8.	H., S. & Co	10,000 00
		T., N. & Co	5,000 00
	13.	John A. Taft	2,300 00
		"	1,229 49
		B. Brastow & Co	2,000 55
		"	2,884 55
		Borden & Bowen	3,449 19
		"	2,000 00
		"	1,449 19
	15.	T., N. & Co	3,500 00
		H., S. & Co	5,000 00
		A. & W. Sprague	2,110 57
	17.	H., S. & Co	7,000 00
	22.	"	8,000 00
		T., N. & Co	3,000 00
	24.	H., S. & Co	6,000 00
	26.	A. & W. Sprague	2,108 15
	29.	H., S. & Co	10,000 00
		T., N. & Co	5,000 00
April	4.	William Simpson	2,853 21
	6.	H., S. & Co	8,000 00
		T., N. & Co	3,000 00
	8.	H., L. & Co	1,500 00
		"	1,500 00
		"	1,500 00
		"	1,500 00
	13.	H., S. & Co	10,000 00
		Corliss Steam-Engine Co	1,100 98

	20.	H., S. & Co		8,500 00
		T., N. & Co		2,000 00
	27.	"		3,000 00
		H., S. & Co		5,000 00
May	4.	William Simpson		6,960 71
	5.	T., N. & Co		5,000 00
		H., S. & Co		5,000 00
	8.	H., L. & Co		2,000 00
		"		1,500 00
439 May		H., L. & Co		$1,500 00
		"		1,500 00
		"		1,500 00
	12.	H., S. & Co		7,500 00
	17.	"		1,500 09
		T., N. & Co		5,000 00
	24.	H., S. & Co		5,000 00
June	8.	H., L. & Co		1,500 00
		"		1,500 06
		"		1,500 00
		"		2,131 48
		H., S. & Co		4,000 00
	9.	"		2,000 00
				$315,780 57

Bills payable December 31st, 1860.

Due 1861.			
January	5.	H., S. & Co	$8,000 00
		T., N. & Co	4,000 00
	12.	H., S. & Co	9,000 00
	15.	Merchants' Bank	10,000 00
	19.	H., S. & Co	6,000 00
		T., H. & Co	4,000 00
	26.	"	5,000 00
		H., S. & Co	6,000 00
	27.	William Simpson	4,589 63
February	2.	T., N. & Co	5,000 00
		H., S. & Co	6,000 00
	4.	William Simpson	4,589 64
	6.	H., S. & Co	4,000 00
		T., N. & Co	3,000 00
	9.	H., S. & Co	7,000 00
	11.	William Simpson	4,589 63
	16.	H., S. & Co	12,000 00
	23.	T., N. & Co	5,000 00
March	2.	H., S. & Co	12,000 00
	9.	William Simpson	4,000 00
		"	3,201 87
440 March	13	H., S. & Co	$5,000 00
		T., N. & Co	5,000 00
	20.	"	5,000 00
		H., S. & Co	5,000 00
	27.	"	5,000 00
		T., N. & Co	1,000 00

April	4.	"	5,000 00
		H., S. & Co	5,000 00
	11.	"	5,000 00
		"	4,000 00
	12.	W. J. King & Son	3,464 49
	18.	H., S. & Co	7,000 00
		T., N. & Co	6,000 00
	19.	W. J. King & Son	3,464 49
	25.	H., S. & Co	6,000 00
		"	5,000 00
	26.	W. J. King & Son	3,464 49
May	2.	H., S. & Co	6,000 00
	4.	W. Simpson	2,263 61
	8.	H., L. & Co	9,000 00
		T., N. & Co	5,000 00
	11.	H., S. & Co	1,500 00
	15.	"	1,500 00
	22.	"	3,000 00
		T., N. & Co	1,500 00
	29.	"	2,000 00
		H., S. & Co	6,500 00
June	6.	"	13,000 00
		T., N. & Co	4,000 00
	13.	H., S. & Co	9,000 00
	20.	"	1,000 00
	21.	"	4,000 00
	27.	"	5,000 00
		T., N. & Co	1,500 00
	29.	H., S. & Co	6,000 00
			$288,127 85

441 *Bills payable December 31st, 1861.*

Due 1862.			
January	4.	H., S. & Co	$10,000 00
		William Simpson	6,490 40
	11.	T., N. & Co	3,000 00
		H., S. & Co	7,000 00
	17.	Coventry Co	2,000 00
	18.	H., S. & Co	7,337 55
		"	11,500 00
		T., N. & Co	2,500 00
	25.	H., S. & Co	9,000 00
		Loan on check, J. & B	6,000 00
February	1.	T., N. & Co	5,000 00
		H., S. & Co	7,000 00
		Loan on check, J. & B	10,000 00
	4.	William Simpson	5,702 48
	8.	T., N. & Co	2,000 00
		H., S. & Co	9,500 00
		Jackson & Butts	10,000 00
	15.	T., N. & Co	5,000 00
		H., S. & Co	5,000 00
		"	6,000 00
		Jackson & Butts	10,000 00

		16.	R. & W. Manton & Co	3,067 36
		17.	Smithfield Co	6,000 00
			Coventry Co	2,560 53
		18.	H., S. & Co	3,000 00
		22.	"	8,000 00
			T., N. & Co	5,000 00
	March	1.	"	5,000 00
			H., S. & Co	8,000 00
		3.	N. Tucker	391 49
			T., N. & M	828 19
			H., T. & Co	626 62
			"	170 81
			H. & T	451 42
			H., S. & Co	3,120 00
			G. P. Co	381 95
			J. C	900 79
			G. W. C	8,948 84
442	March	4.	William Simpson	$1,450 34
		5.	Smithfield Co	2,500 00
			H., S. & Co	9,000 00
		12.	"	6,000 00
			T., N. & Co	5,000 00
		17.	Coventry Co	2,000 00
		18.	Borden & Bowen	10,000 00
		19.	H., S. & Co	3,000 00
		20.	Merchants' Bank	7,500 00
		26.	T., N. & Co	5,000 00
		27.	Merchants' Bank	7,500 00
	April	2.	Smithfield Co	3,077 42
			H., S. & Co	5,000 00
			T., N. & Co	5,000 00
			H. A. Hidden	6,032 41
		4.	William Simpson	5,589 58
		5.	H., S. & Co	3,000 00
		10.	"	10,000 00
		17.	T., N. & Co	5,000 00
		19.	W. W. Bishop, agent	4,000 00
		23.	R. M. Larned	5,193 08
			Reynolds & Co	5,193 08
		24.	H., S. & Co	8,000 00
			T., N. & Co	3,000 00
		29.	Elliot Manufacturing Co	1,000 00
	May	1.	H., S. & Co	10,000 00
			T., N. & Co	5,000 00
		3.	"	699 84
			"	717 65
			E. Hoyt	2,080 61
			N. Knight	848 08
			W. B. Greene	746 31
			G. W. C	9,459 00
		4.	Day & Daniels	2,000 00
			"	6,000 00
			S. A. Aldrich	2,040 66
			J. H. Mason & Son	2,316 35
			William Simpson	10,124 65
		5.	S. Hutchins & Co	4,348 86

			Elliottville Co	2,352 40
		7.	H., S. & Co	14,000 00
443	May		T., N. & Co	$7,000 00
		9.	Reynolds & Co	2,057 00
			Albion Co	1,582 75
		12.	Elliottville Co	1,000 00
		14.	Newall & Daniels	3,000 00
			H., S. & Co	10,000 00
		10.	A. Farnum	5,864 90
		15.	Borden & Bowen	10,000 00
		21.	H., S. & Co	5,000 00
			T., N. & Co	5,000 00
			E. P. Mason	14,219 49
		22.	S. Waterman, agent	3,000 00
		24.	H., S. & Co	5,000 00
		25.	S. Arnold & R. Waterman	2,500 00
			" "	992 76
			" "	3,492 76
		26.	J. H. Mason & Son	2,317 20
		28.	H., S. & Co	10,000 00
			D. Remington	3,000 00
		29.	S. S. Smith	9,268 84
		30.	R. M. Larned	5,193 09
			W. W. Bishop	5,320 14
June		1.	R. M. Larned	5,193 08
			Borden & Bowen	1,890 64
			T. Beckwith	8,489 20
			D. Remington	5,096 59
		2.	H. A. Hidden	6,032 43
			G. R. Browne	10,000 00
		5.	H., S. & Co	7,500 00
			T., N. & Co	10,000 00
			Gleeson & Brownell	2,257 51
			Reynolds & Co	4,869 62
		6.	D. Remington & Son	3,533 24
		7.	G. R. Browne	5,270 27
		9.	R. Waterman	3,492 76
			S. Arnold, (s. c.)	3,492 76
		10.	A. Farnum	5,864 91
		12.	R. Waterman	3,000 00
			H., S. & Co	3,000 00
		13.	"	10,000 00
			T., N. & Co	5,000 00
444	June	14.	W. W. Bishop, agent	$2,667 40
		19.	T., N. & Co	15,000 00
			H., S. & Co	5,000 00
		23.	G. R. Browne	4,700 00
			"	4,654 11
			"	4,553 11
		26.	H., S. & Co	8,000 00
			T., N. & Co	10,000 00
		28.	W. W. Bishop, agent	2,667 93
		29.	J. H. Mason & Son	2,394 08
July		2.	Borden & Bowen	5,000 00
			"	5,000 00
		3.	G. W. C	5,300 00

		E. H	2,390 95
		N. K	974 57
		W. B. G	857 62
		T., N. & Co	1,453 82
		G. W. C	4,240 00
	7.	Reynolds & Co	2,596 54
		"	2,596 54
		R. M. Larned	5,193 09
	10.	A. Farnum	5,864 90
	11.	W. W. Bishop, agent	4,000 00
August	1.	Borden & Bowen	5,000 00
		"	5,000 00
	2.	H. A. Hidden	6,032 41
			$737,168 76

Bills payable December 31st, 1862.

Due 1863.			
January	14.	Reynolds & Co	8,000 00
	20.	Merchants' Bank	15,000 00
	22.	Reynolds & Co	10,000 00
		"	5,000 00
	23.	A. Tucker & Co	10,000 00
	28.	Reynolds & Co	7,000 00
February	5.	"	6,000 00
		"	7,000 00
445	February 12.	Reynolds & Co	$7,000 00
		"	7,000 00
	14.	"	10,000 00
	19.	"	6,000 00
		"	7,000 00
	21.	"	5,000 00
	23.	A. Tucker & Co	10,000 00
	28.	Reynolds & Co	10,000 00
		L. M. Blodgett	6,000 00
		"	5,000 00
		"	5,000 00
March	4.	George R. Browne	10,000 00
		"	10,000 00
		W. C. Chapin	5,000 00
		"	5,000 00
	6.	Merchants' Bank	15,000 00
	13.	Reynolds & Co	5,000 00
		"	5,000 00
	14.	"	7,000 00
	21.	"	10,000 00
		"	5,000 00
		"	5,000 00
	24.	"	6,000 00
		"	6,000 00
	28.	"	8,000 00
		"	5,000 00
		L. M. Blodgett	3,000 00
		"	4,150 07
April	4.	George R. Browne	15,000 00

			Reynolds & Co	8,000 00
		6.	"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	2,351 94
		11.	"	5,000 00
		13.	"	5,000 00
			"	5,000 00
		14.	"	5,000 00
			"	5,000 00
		15.	"	5,000 00
446	April	17.	Reynolds & Co	$10,000 00
		18.	"	6,000 00
		20.	"	5,000 00
		23.	"	5,000 00
		24.	"	6,000 00
			"	7,000 00
		25.	"	10,000 00
	May	2.	"	10,000 00
			"	10,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
		4.	W. C. Chapin	5,000 00
			"	5,000 00
			"	4,500 00
		6.	Reynolds & Co	5,000 00
			"	5,000 00
			"	5,000 00
		8.	A. Tucker, jr	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
		9.	H. A. Hidden	26,000 00
		15.	D. S. Skinner, agent	10,000 00
			"	10,000 00
			Reynolds & Co	25,000 00
		16.	"	5,000 00
			"	15,000 00
		22.	D. S. Skinner, agent	10,000 00
			"	10,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
		29.	"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
447	May		D. S. Skinner, agent	$5,000 00
		30.	Eagle Bank, Bristol	5,000 00
	June	6.	D. S. Skinner, agent	5,000 00

			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	7,000 00
			Reynolds & Co	25,000 00
		8.	A. Tucker, jr	5,000 00
			"	5,000 00
			"	1,500 00
			"	1,500 00
			"	5,000 00
			"	500 00
		11.	Reynolds & Co	5,000 00
			"	10,000 00
		13.	"	5,000 00
			"	15,000 00
		18.	H. A. Hidden	30,000 00
			Reynolds & Co	10,000 00
			"	10,000 00
			"	5,000 00
			"	6,000 00
		24.	D. Remington & Son	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			Reynolds & Co	5,000 00
			"	5,000 00
July		2.	D. Remington & Son	4,000 00
		3.	H. A. Hidden	12,500 00
			What Cheer Bank	5,000 00
		4.	W. C. Chapin	5,000 00
			"	5,000 00
448	June	8.	A. Tucker, jr	$5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
				$928,002 01

Bills payable December 31st, 1863.

Due 1864.				
January		23.	Jackson & Butts	$10,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
			"	5,000 00
February		10.	Merchants' Bank	7,000 00
			"	7,000 00

		Bank of Commerce	7,000 00
		Providence Bank	7,000 00
	26.	"	6,000 00
		Merchants' Bank	6,000 00
		"	6,000 00
		Bank of Commerce	6,000 00
March	6.	Merchants' Bank	15,000 00
	10.	"	7,000 00
		"	7,000 00
		Bank of Commerce	7,000 00
		What Cheer Bank	5,000 00
		Providence Bank	7,000 00
	17.	Merchants' Bank	5,000 00
		"	5,000 00
		"	5,000 00
		Bank of Commerce	15,000 00
		"	15,000 00
	24.	Providence Bank	25,000 00
	31.	What Cheer Bank	5,000 00
April	8.	"	6,000 90
		Merchants' Bank	10,090 00
	16.	"	15,000 00
449	April 16.	Merchants' Bank	$15,000 00
		American Bank	15,000 00
	26.	"	15,000 00
May	5.	Merchants' Bank	20,000 00
		What Cheer Bank	5,000 00
	10.	Orray Taft & Co	10,000 00
		Roger Williams Bank	10,000 00
		Globe Bank	10,000 00
	12.	Bank of Commerce	30,000 00
	19.	What Cheer Bank	5,000 00
June	9.	Jackson & Butts	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
	15.	H. A. Hidden	15,000 00
	22.	"	20,000 00
	24.	"	25,000 00
		"	25,000 00
	25.	Jackson & Butts	10,000 00
		"	10,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
July	1.	What Cheer Bank	5,000 00
	2.	Jackson & Butts	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00

		"	5,000 00
	3.	H. A. Hidden	10,000 00
	5.	"	10,000 00
	12.	"	20,000 00
			$611,000 00

450 *Bills payable December 31st, 1864.*

Due 1865.			
January	8.	H. A. Hidden	$10,000 00
	14.	"	20,000 00
		B. M. Jackson & Co., 10 notes of $5,000 each	50,000 00
		What Cheer Bank	6,000 00
		"	6,000 09
	16.	Orray Taft & Co	10,000 00
		"	10,000 00
		"	10,000 00
	18.	Corliss Steam-Engine Co	3,000 00
	21.	B. M. Jackson & Co., 10 notes of $5,000 each	50,000 00
	23.	B. B. & R. Knight	10,000 00
		"	5,000 00
	28.	H. A. Hidden	10,000 00
		B. M. Jackson & Co., 5 notes of $5,000 each	25,000 00
	31.	Eli Aylesworth	5,000 00
		George W. Butts	5,500 00
		H. A. Hidden	5,000 00
	8.	What Cheer Bank	8,000 00
	17.	City Bank	10,000 00
February	2.	G. W. Butts	15,000 00
	4.	H. A. Hidden	10,000 00
		B. M. Jackson & Co., 4 of $5,000 each	20,000 00
	2.	"	5,000 00
	8.	G. W. Butts	8,000 09
		"	8,000 00
		"	9,000 00
		"	5,000 00
		"	5,000 00
		"	4,000 00
		"	4,000 00
		"	4,000 00
		"	3,000 00
	9.	H. A. Hidden	10,000 00
	11.	B. M. J. & Co	10,000 00
451	February 11.	B. M. J. & Co	$10,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00
		"	5,000 00

		Bank of Commerce	4,000 00
		What Cheer Bank	4,000 00
		Provideuce "	4,000 00
		H. A. Hidden	7,500 00
	15.	B. M. J. & Co., 5 of $5,000 each	25,000 00
	16.	"	10,000 00
	18.	H. Anthony	3,000 00
		Byron Sprague, 5 of $5,000 each	25,000 00
		B. M. J. & Co., 10 of $5,000 each	50,000 00
		Citizens' Union Bank	5.000 00
	21.	B. M. J. & Co., 3 of $5,000 each	15,000 09
	25.	G. W. Butts	10,000 00
	6.	What Cheer Bank	8,000 00
March	3.	B. M. J. & Co., 5 of $5,000 each	25,000 00
	8.	G. W. Cutts, 10 of $5,000 each	50,000 00
		Bank of Commerce	4,000 00
		G. W. Butts	2,500 00
	15.	B. M. J. & Co., 10 of $5,000 each	50,000 00
		Geo. W. Butts, 10 of $5,000 each	50,000 00
	17.	B. M. J. & Co., 10 of $5,000 each	50,000 00
	22.	" 10 of $5,000 each	50,000 00
	3.	What Cheer Bank	8,000 00
		Bank of Commerce	4,000 00
	31.	"	4,000 00
		What Cheer Bank	8,000 00
April	4.	B. M. J. & Co., 10 of $5,000 each	50,000 00
		H. A. Hidden	10,000 00
	6.	Bank of Commerce	4,000 00
	8.	B. M. J. & Co., 10 of $5,000 each	50,000 00
	13.	"	3,000 00
	16.	J. J. P. & J. M. Campbell	7,400 00
	22.	H. A. Hidden	10,000 00
	8.	P. S. & Gas Pipe Co	7,000 00
	29.	Bank of Commerce	4,000 00
452 April		What Cheer Bank	8,000 00
May	24.	B. M. J. & Co., 10 of $5,000 each	50,000 00
June	8.	Philip Case	6,000 00
	20.	Albert Waterman	5,000 00
	24.	B. M. J. & Co., 10 of $5,000 each	50,000 00
February	23.	H. A. Hidden	25,000 00
		"	25,000 00
		"	10,000 00
		Chapin & Sampson	4,000 00
			$1,222,900 00

Bills payable December 31st, 1865.

Due 1866.			
January	6.	George W. Butts	$9,000 00
		"	8,000 00
		"	8,000 00
		B. M. Jackson & Co., 5 of $5,000 each	25,000 00
	7.	What Cheer Bank	8,000 00

	13.	Butts & Cranston	5,000 00
		B. M. J. & Co., 5 of $5,000 each	25,000 00
	10.	"	10,000 00
	14.	Merchants' Bank	10,000 00
	20.	B. M. J. & Co., 5 of $5,000 each	25,000 00
		What Cheer Bank	10,000 00
		Fifth National Bank	10,000 00
	27.	H. A. Hidden	20,000 00
		Fifth National Bank	6,000 00
		B. M. J. & Co., 5 of $5,000 each	25,000 00
February	3.	" 10 of $5,000 each	50,000 00
	5.	Bank of Commerce	5,000 00
		What Cheer Bank	8,000 00
	10.	B. M. Jackson & Co., 10 of $5,000 each	50,000 00
		H. A. Hidden	6,000 00
		L. M. Blodgett	10,000 00
	12.	Merchants' Bank	30,000 00
	17.	B. M. J. & Co., 15 of $5,000 each	75,000 00
		Butts & Cranston	4,500 00
453 February		Atlantic Bank	$5,000 00
	22.	H. A. Hidden	25,000 00
		"	25,000 00
	24.	B. M. J. & Co., 5 of $5,000 each	25,000 00
		Butts & Cranston	20,000 00
		H. Anthony	3,500 00
March	3.	B. M. J. & Co	10,000 00
		"	10,000 00
		"	5,000 00
		H. A. Hidden	25,000 00
		What Cheer Bank	8,000 00
		Bank of Commerce	5,000 00
		B. M. J. & Co., 2 of $5,000 each	10,000 00
	7.	" 9 of $5,000 each	45,000 00
	14.	E. P. Taft and J. C. Knight, trustees	30,000 00
	21.	Merchants' Bank	10,000 00
	28.	What Cheer Bank	10,000 00
		B. M. J. & Co., 3 of $5,000 each	15,000 00
	30.	What Cheer Bank	8,000 00
		Bank of Commerce	5,000 00
		Warren National Bank	5,000 00
April	5.	B. M. J. & Co., 12 of $5,000 each	60,000 00
	7.	Merchants' Bank	10,000 00
	12.	B. M. Jackson & Co., 10 of $5,000 each	50,000 00
	14.	Merchants' Bank	6,000 00
		Prov. S. & G. Pipe Co	6,000 00
	19.	B. W. J. & Co., 5 of $5,000 each	25,000 00
	26.	" 5 of $5,000 each	25,000 00
	28.	" 4 of $5,000 each	20,000 00
	29.	What Cheer Bank	8,000 00
		Bank of Commerce	5,000 00
		Union Bank	5,000 00
May	9.	Bourn & Co., 5 of $5,000 each	25,000 00
	16.	" 5 of $5,000 each	25,000 00
	23.	" 5 of $5,000 each	25,000 00
		Albert Sheldon	3,000 00
	30.	Bourn & Co., 5 of $5,000 each	25,000 00

June	8.	G. W. Butts	18,000 00
	29.	What Cheer Bank	10,000 00
			$1,098,500 00

454 *Bills payable December 31st, 1866.*

Due 1867.

January	4.	Philip Case	$10,000 00
		Albert Sheldon	3,700 00
	5.	B. M. J. & Co., 5 of $5,000 each	25,000 00
	12.	" 15 of $5,000 each	75,000 00
		H. A. Hidden	10,000 00
		Phenix Bank	5,000 00
	18.	Lowell Machine Shop	12,000 00
		"	12,731 04
	19.	B. M. J. & Co., 10 of $5,000 each	50,000 00
	28.	L. M. Blodgett	10,000 00
	26.	Bourn & Co., 5 of $5,000 each	25,000 00
February	2.	B. M. J. & Co., 5 of $5,000 each	25,000 00
	9.	B. M. J. & Co., 10 of $5,000 each	50,000 00
	18.	L. M. Blodget	10,000 00
		Merchants' Bank	15,000 00
	16.	B. M. J. & Co., 5 of $5,000 each	25,000 00
	23.	H. A. Hidden	25,000 00
		B. M. J. & Co., 5 of $5,000 each	25,000 00
		H. A. Hidden	25,000 00
		"	10,000 00
March	2.	Butchers & Drovers' Bank	15,000 00
		B. M. J. & Co., 5 of $5,000 each	25,000 00
	6.	" 5 of $5,000 each	25,000 00
		J. A. Taft	20,000 00
		"	20,000 00
		H. A. Hidden	20,000 00
	13.	B. M. Jackson & Co., 10 of $5,000 each	50,000 00
	20.	" 10 of $5,000 each	50,000 00
	21.	H. A. Hidden	6,000 00
	27.	Butchers & Drovers' Bank	15,000 00
		B. M. J. & Co., 5 of $5,000 each	25,000 00
	30.	Fales, Jenks & Sons	5,430 00
April	4.	B. M. J. & Co., 5 of $5,000 each	25,000 00
		Bourn & Co., 6 of $5,000 each	30,000 00
		B. M. J. & Co., 2 of $5,000 each	10,000 00
	11.	" 10 of $5,000 each	50,000 00
	18.	" 10 of $5,000 each	50,000 00
		G. W. Butts	15,000 00
455 April	20.	Manchester, Hopkins & Co	$12,259 92
	22.	Bourn & Co., 2 of $10,000, 1 of $5,000	25,000 00
	25.	B. J. M. & Co., 10 of $5,000 each	50,000 00
		H. A. Hidden	7,000 00
May	1.	Lowell Machine Shop	20,000 00
		"	15,094 14
	2.	B. M. J. & Co., 10 of $5,000 each	50,000 00
		Bourn & Co., 5 of $5,000 each	25,000 00
		G. W. Butts	15,000 00

	5.	"	20,000 00
	8.	B. M. J. & Co., 5 of $5,000 each	25,000 00
		Bourn & Co., 5 of $5,000 each	25,000 00
	13.	G. W. Butts, 3 of $20,000 each	60,000 00
	15.	B. M. J. & Co., 10 of $5,000 each	50,000 00
	22	" 10 of $5,000 each	50,000 00
	25.	R. W. Greene	5,000 00
June	27.	Bourn & Co., 4 of $5,000 each	20,000 00
	29.	B. M. J. & Co	25,000 00
July	2.	"	25,000 00
			$1,429,215 10

Bills payable December 31st, 1867.

Due 1868.			
January	4.	A. T. Sheldon	$1,600 00
	10.	B. M. J. & Co., 10 of $5,000 each	50,000 00
February	8.	" 10 of $5,000 each	50,000 00
	17.	Manchester, Hopkins & Co	6,000 00
	23.	L. M. Blodgett	10,000 00
March	17.	Manchester, Hopkins & Co	6,738 00
	18.	H. A. Hidden	25,521 46
	19.	B. M. J. & Co	5,000 00
	21.	" 5 of $5,000 each	25,000 00
	26.	G. W. Butts	15,000 00
	27.	H. A. Hidden	20,000 00
		"	20,000 00
April	4.	A. T. Sheldon	2,000 00
	17.	Manchester, Hopkins & Co	6,000 00
	18.	R. W. Greene	5,000 00
456 May	1.	G. W. Butts	$15,000 00
	4.	Sheldon Knight	4,000 00
	7.	G. W. Butts	10,000 00
		"	10,000 00
	9.	R. W. Greene	5,000 00
		"	5,000 00
	22.	"	4,000 00
	23.	B. M. J. & Co	5,000 00
June	6.	"	5,000 00
			$310,859 46

[GG.]—*Filed August* 4, 1870.

The complainant, in response to the notice of the defendants that she state what constitute the "items of account of De Laine Company vs. L. B. Frieze, assignee, belonging to estate of C. T. James to pay," says that the same is arrived at as follows:

The account referred to and used in making up the complainant's statement was the account of the De Laine Company against Frieze, assignee, brought up to January 1, 1853, and which was used at the time the settlement, which has been decreed to be void and to be set aside, was made. The amount of that account was $53,314.77. Charles T. James made his assignment September 2d, 1851. The assignee was

directed to complete the mill according to the contract, which he did. Prior to his assignment the company had paid James $231,000 of the $260,000, which was the contract-price. The balance due was $29,000. All the dealings concerning the mill, after September 2d, 1851, were between the company and the assignee. Deducting from the amount of the account against the assignee the balance due on the contract-price, there will remain $24,314.77.

LUCINDA JAMES,
By her solicitor, J. H. PARSONS.

457 [HH.]—*Filed August* 4, 1870.

(Copy.)

Know all men by these presents, that I, Charles T. James, of the city and county of Providence and State of Rhode Island, for and in consideration of the sum of seventy-five thousand dollars to me paid by George W. Chapin, of said city of Providence, as trustee of Hill, Carpenter & Co., and of the Globe Printing Company of said Providence; of Hoyt & Tillinghast, of the city of New York; of Hacker, Lea & Co., of the city of Philadelphia, and of Dodge, Tucker & Co., of Boston, the receipt of which said sum is hereby acknowledged, have given, granted, bargained, sold, assigned, transferred, and set over, and do by these presents give, grant, bargain, sell, assign, transfer, and set over to him, the said George W. Chapin, as trustee aforesaid, his heirs and assigns, forever, all my right, title, and interest in and to the capital stock of the Atlantic De Laine Company, a corporation incorporated by the general assembly of said State, and in and to all the real and personal estate of the said corporation, whether the same be held by the said corporation or by any person or persons in trust for them, and in and to all the real estate situate in the town of North Providence, in said county, and in and to the personal property and estate held by me, the said Charles T. James, and the said Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., and others, either as trustees or as tenants in common, or by any other person in trust for me and them and others:

To have and to hold the same, with all the rights, privileges, and appurtenances thereof or thereunto appertaining to him, the said George W. Chapin, as trustee as aforesaid, his heirs and assigns, forever.

Provided always, and this deed is upon this express condition, that whereas I, the aforenamed Charles T. James, have this day made and executed my certain negotiable promissory note, bearing even date herewith, and made payable to George W. Chapin, as trustee as
458 aforesaid of Hill, Carpenter & Co., of the Globe Printing Company; of Hoyt & Tillinghast; of Hacker, Lea & Co., and of Dodge, Tucker & Co., or order, in twelve months after date, with interest thereon, for the sum of twenty-five thousand dollars.

And whereas they, the aforenamed Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co. and Dodge Tucker & Co., have also agreed to make, execute, and deliver to me, the said Charles T. James, their certain negotiable promissory notes, all to be made payable to me, the said Charles T. James, or order, of even date herewith, and payable in six months after date, to the amount of fifty thousand dollars; and have also agreed that on the maturity thereof they will, at my request, renew the same for a farther term of six months, the payment of which said notes so made and executed by them and also

the payment of such other notes as may be hereafter made and executed by them, in renewal as aforesaid, being assumed by me, the said Charles T. James; said notes to be signed by the said George W. Chapin, as trustee as aforesaid, with privilege of paying before maturity.

Now, therefore, if I, the aforenamed Charles T. James, or my heirs, executors, or administrators, or any other person for me or them, shall well and truly pay or cause to be paid the aforenamed notes, with the interest thereon, and at or before their maturity, according to term, and shall also, at all times forever hereafter, indemnify and save them, the said Hill, Carpenter, & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., their heirs, executors, administrators, and assigns, harmless of and from any payment for or on account of said notes so made and given by them, or which may hereafter be given by them in renewal as aforesaid, and of and from all loss or damage, interest, costs, and expenses arising from, out of, or by reason of said notes so given, or that may hereafter be given in renewal as aforesaid, then this deed is to be void, but otherwise to be and remain in full force and effect.

Furthermore, I, the aforenamed Charles T. James, do hereby constitute and appoint the aforenamed George W. Chapin, his execu-
459 tors, administrators and assigns, my true and lawful attorney or attorneys, irrevocable, with full power of substitution and of revocation, for me and in my name, or in his or their name or names, at any time, in case default shall be made in the payment of any note or notes, hereby secured, and such default shall continue for the term of six months, to sell at public auction the whole, or any part or portion of the afore-granted premises, he or they first giving, after the expiration of said term of six months, twenty days' notice of such sale in some one of the public newspapers printed in said city of Providence, and in my name or in his or their name or names to make, execute, seal, acknowledge, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds, or other conveyances thereof, so as to vest in such purchaser or purchasers as full a title thereto as is hereby conveyed; and on sale thereof (hereby giving and granting unto my said attorney or attorneys full power or authority to adjourn and continue said sale from time to time) I do authorize my said attorney or attorneys to receive of and from the purchaser or purchasers thereof the amount the same shall be sold for, and after the payment of all the expenses incidental to such sale or sales to apply and appropriate the residue thereof to the payment of the amount due on such note or notes as are hereby secured, and accounting to me, my heirs, or assigns, for all sums over and above the amount thereof, I hereby ratifying and confirming such sale or sales as may be made or caused to be made by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this first day of August, in the year of our Lord one thousand eight hundred and fifty-one.

CHARLES T. JAMES. [L. S.]

Signed, sealed, and delivered in presence of—

The words "and at or before their maturity" being interlined; the words "thirty days" being erased in two places, and the words "six months" to be interlined above the erasures.

HENRY MARTIN.

460 PROVIDENCE, SC., COUNTY. In Providence, this 5th day of August, A. D. 1851. Then Charles T. James personally appeared

before me, and acknowledged the preceding instrument by him signed to be his free act and deed.

HENRY MARTIN,
Justice of the Peace.

Lodged for record August 5th, 1851, at 2½ o'clock p. m.
Recorded.
Attest:

NORTH PROVIDENCE, *Feb.* 23, 1853.
A true copy from the registry of deeds in this town.
J. H. WEEDEN, *T. Clerk.*

[II.]—*Filed September* 6, 1870.

Atlantic De Laine Company, assets December 31, 1869.

Construction account	$2,054,524 07
Goods in agent's hands	877,947 63
Wool at mill	523,817 99
Goods at mill	289,108 83
De laines at A. & W. Sprague's	593,598 26
Cotton and wool stock in process and wool waste	207,462 20
Supplies at mill	141,945 25
Cotton at mill	58,221 97
Bills receivable	146,726 53
Cash	65,962 49
Riverside Mills	40,455 30
Stock in Providence and New York S. S. Co	6,912 00
Due from sundry persons on account	56,150 02
	5,062,832 54

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treasurer.*

Subscribed and sworn to before me September 7, 1870.
C. HART, *Commissioner.*

461 [JJ.]—*Filed September* 6, 1870.

Atlantic De Laine Company, liabilities December 31, 1869.

Due Hoyt, Sprague & Co	$4,026,374 36
" Bills payable	74,402 22
" Dabney, Morgan & Co	162,060 00
" United States	39,240 51
" Sundry persons on account	82,193 83
	4,384,270 92

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treasurer.*

Subscribed and sworn to before me this seventh day of September, 1870.

C. HART, *Master.*

[KK.]—*Filed September* 6, 1870.

Amount due Hoyt, Sprague & Co. December 31, 1868..	$2,818,682	22
" " " " 31, 1869..	4,026,374	36
Amount bills payable December 31, 1868.....	16,441	79
" " " " 31, 1869.....	74,402	22
Gain in 1868.....	273,129	21
Loss in 1869.....	199,048	45

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treasurer.*

OFFICE OF THE ATLANTIC DE LAINE CO., *August* 31, 1870.

Subscribed and sworn to before me September 7, 1870.
C. HART, *Master.*

462 *Report of testimony before Charles Hart, esq., master.*

JUNE 10, 1869.

JOHN R. BALCH sworn:

Direct examination by James H. Parsons, esq.:

Q. Have you, as the accountant and book-keeper appointed in this case, made any examination of the accounts heretofore filed by the Atlantic De Laine Company and George W. Chapin in connection with the books of said company; and if so, will you state in your own way, and in such way as you may deem best, what examination you have made, what you have ascertained, and produce any accounts, statements, or papers which you have prepared or which have been furnished you?

A. Yes, sir; there is an account marked F, page 11 of the pamphlet marked N.* I have examined that with the books which Mr. Chapin and his clerks furnished me, and I find there is occasionally a little typographical error; that there are one or two omissions; but it adds up all right. I went through the whole of that pamphlet and examined it; the whole of the accounts appearing in the pamphlet called "Motion for instructions to the master," marked N. You will perceive these statements in detail correspond exactly with the entries on the book.

Then we come to this other pamphlet, "Lucinda James, administratrix, vs. Atlantic De Laine Company, marked L, being the account filed by the respondents in compliance with the master's order. Where the statements are made on the aggregate I took the books and examined all the details; for instance the bills payable. There is a sheet marked 1, containing every item that goes to make up that sum,
463 $410,615.39, examined by the journal and also by the bill-book. Nos. 2, 3, and 4, due agents for advances on goods, $90,026.19.

Q. To whom are they due?

A. Due various persons on account, $51,404.44. Those are five people, as appears on the ledger.

Capital stock, $287,495.53. Those are the shareholders, and those are the proportions. There is the same statement on pages 11 and 12 of the pamphlet L.

Mr. Parsons puts in letter from himself to Mr. Balch, dated March 29, 1869, and now marked by the master Exhibit "O."

The question first put to Mr. Balch is repeated.

*The pamphlet N contained the several exhibits in the case from A to K, and was used by the witness for convenience in examining the books.

A. In accordance with this letter from Mr. Parsons I took this book, "Motion for Instructions," marked N, and gave it a thorough examination with the books that were furnished me by Mr. Chapin, and those are my check marks, the whole of them. I find them all correct with the exception of a few typographical errors, which do not alter the amounts at all. Where I came to the amounts that were stated in the aggregate I took the books and made a complete list in detail of those amounts. For instance, here are nine documents which go to make up that statement. There is a list of the bills payable marked 1, $410,615.19. Those are from the journal as well as from the bill-book.

Q. Please hand those to the master to be marked and annexed as a part of your examination.

A. There is "due agents, advances on goods, $90,026.19," and here is a list of the parties to whom it is due:

Due various persons on account $51,404.44; and there is a list of the parties copied from the books. There is "capital stock," and here are the owners of the shares. That is all on the paper marked "2, 3, and 4."

Then on the credit there is cash and bills receivable on hand $13,584.92, marked "5."

There is the real estate, &c., $310,006.04, numbered "6;" "7," wool, cotton, and supplies at mill, $190,692.17; "8," delaines, cassimeres on hand, $149,516.74; "9," balance. That I asked the book-keeper
464 to state to me. He says it grows out of losses on cassimeres and de laines, estimated losses; but he showed me afterwards the losses exceeded that by several thousand dollars after they were fully sold; some months after, I satisfied myself that was a proper entry.

There are nine documents referred to as applicable to page 26 of the pamphlet marked, "Motion for instructions." Mr. Chapin's book, in compliance with the order of the master, is an exact copy of that account in here, word for word, with these nine entries. That statement is also in here, being the paper marked "N." This pamphlet is Mr. Chapin's account filed in compliance with the order of the master, marked "L." There it is again. We found three of them. This statement is the same with the one in the other printed one on page 26. They all three agree.

This (No. 10) is a list of liabilities, $2,865,104.07. I went into the books and made out a list of the liabilities, and it agrees with these figures on page 31. One item is bills payable, $310,859.46, marked "11." Then there are the assets of the company, consisting of real estate, buildings, machinery, &c., (marked 12,) $1,774,522.55.

Q. (By Mr. Payne.) That is an asset; it isn't a liability.

A. Yes, sir; these two embrace it. Those are the outstanding accounts and claims.

(Witness puts in statement of liabilities on page 31, marked "10" and "11" respectively.)

Then, as regards the real estate: real estate, buildings, machinery, &c., standing on the books, $1,774,522.55; cash, bills receivable, and debts due from sundry persons, $214,616.53. That I have examined. Wool, cotton, machinery, materials, and goods manufactured and in process, $1,459,017.70; making a total of $3,448,156.78.

MEMORANDUM.—The cost of the mill was reduced, as per books, from $491,281.91 to $300,000, viz: Charged off to profit and loss December 31, 1858, $64,541.79; December 31, 1859, $126,740.12; making a total of $191,281.91. (See book L, page 31.) That reduces the construction-account down to $300,000. This construction-account, which I have thoroughly examined by the books which were furnished me at

465 the office, commences December 31, 1859, with the sum of $300,000. They run down embracing the whole of that.

Q. At what time do the construction-accounts which you have examined commence?

A. December 31, 1859.

Q. What is the entry of December 31, 1859?

A. That is, December 31, 1858, the construction-account was $491,281.91. They reduced it by $191,281.91 down to $300,000.

Q. When, after December 31, 1859, was any new entry made on the construction-account? I want to know when the construction-account commences again.

A. February 18, 1863, it commences again; the first entry ran through '64, '65, '66, and '67, down to the time of filing the account L.

Q. What is the total footing of all the construction-accounts up to January 1, 1868?

A. $1,774,522.55.

Q. Will you examine the detailed account which you have prepared of the liabilities of the company, and state to whom the largest proportion of the indebtedness of the company was due on the 31st of December, 1867, and what is the amount of that indebtedness?

A. The largest person was Hoyt, Sprague & Co.; in amount, $2,488,275.80.

Q. What did you ascertain to be the total entire amount of indebtedness of the company?

A. $2,865,104.07.

Q. Have you made any examination of the books for the purpose of ascertaining, if possible, the details of this enormous indebtedness to Hoyt, Sprague & Co.?

A. I have not, sir. It was only yesterday that I was notified it was required.

Q. Will you make such examination, and, if necessary, prepare a transcript of the account, if the same cannot otherwise be procured?

A. Perhaps Mr. Chapin could explain.

Q. I want to have that account here. We want a full transcript of it from the time the indebtedness commenced up to the present time.

466 A. I was informed it was advances on goods that lay there for sale, and advances on wool.

Q. We want to get that account just as it stands, for the purpose of giving us a basis on which to start.

Mr. PAYNE. Mr. Balch may go and direct it to be made off, or you may go and make such abstracts as you wish.

Mr. HART. Mr. Balch says he will, and there is no objection on the other side.

Q. On page 30 of the printed copy of the account which the master has marked "L," it appears that compensation is made to the stockholders for their endorsements and acceptances to the amount of $231,371.65, which, it is stated, will appear from the record of the meeting and the books of the company. Have you examined the books of the company for the purpose of ascertaining the date of that meeting, and the proportional amount compensated to each stockholder?

A. No, sir; I have not.

Q. Will you, when you make your examination touching the liabilities, also ascertain that date and the proceedings of the company at that meeting, the amounts, to whom paid, and how paid?

A. I will.

Q. Did you make any examination of the statements of loss and gain appearing on page 30 of the account, which the master has marked "L," from December, 1853, to December, 1867?

A. No, sir; I did not.

Q. Will you, in making your further examination of the books, examine——

A. Do you suppose those appear on the books?

Mr. CHAPIN. That all appears there. I didn't know but he had verified it.

Q. Will you examine those accounts, and, if they are correct, verify them?

A. I will.

467 Mr. PARSONS. That is all I have until these accounts are returned.

Adjourned.

JULY 7, 1869.

Examination of Mr. Balch continued:

Q. Since you were last examined have you made any examination of the books or records of the Atlantic De Laine Company touching the compensation made to certain stockholders for endorsements and acceptances? If so, will you state what you have done, and annex to your deposition any exhibits referring to the same which you may have obtained from the books?

A. I have copied from the books of records of the Atlantic De Laine Company the proceeding of a meeting held October 10, 1861. They authorize their treasurer, it seems, to make compensation to certain stockholders in stock and notes. I annex the copy which I made from the records, marked "P." I have also copied from the books of the company the exact manner in which the stockholders who were compensated for indorsements and acceptances in accordance with the vote contained in paper marked "P" by the master were settled with. I annex the statement, which is marked by the master "Q."

Q. Have you ascertained from the examination of the books what was the amount of the indebtedness of the company to Hoyt, Spragues & Co., from the time the indebtedness commenced on the 31st day of December of each year, up to December 31, 1867; and have you also from the books ascertained the amount of goods in the hands of Hoyt, Spragues & Co., December 31, 1867? In answering this question, please state, if you have ascertained, whether the books do or do not show any separate accounts for "advances on goods" and for loans.

A. I have made an examination of the books, and I submit the paper marked "R" by the master, in answer to the question propounded to me.

Adjourned.

468 SEPTEMBER 16, 1869.

Examination of John R. Balch resumed by J. H. Parsons:

Q. Have you made out a list, as you were requested, of the notes outstanding on the 31st day of December of each year, from the time at which you were requested to make the examination until the 31st day of December, 1867?

A. I have not, sir. I have not been denied access to the books, but when

I have been there it has been during the hot season, and they have been very busy, and have not been able to assist me along with the books. There has been no disposition on their part to evade it as I perceive.

Q. To what extent have you made such examination?

A. Well, I have hardly done anything about it, because it is quite a job, and it was doubtful whether it would be called for.

Q. Have you requested Mr. Chapin to give you access to the books, so that you could make out the account which you were requested to make out from them? You can, in your answer to this question, make any explanation which you desire to make.

A. I called at Mr. Chapin's office day before yesterday, and told him that I had a notice of this meeting to-day, and that I had not prepared myself to make a report; that it could not be accomplished between that time and this. I think he told me that he was going to see Mr. Payne before the meeting, and would make it satisfactory to him. I never have approached Mr. Chapin and demanded positively the books, you know. I went there, and there was no denial but that I could take them when I wanted to. His clerks were very busy the day when I went there, and could not assist me in the preparation.

Q. Your last examination occurred on the 7th day of July, and you were then requested to make the examination referred to. How soon after the meeting of July 7th, 1869, did you call upon Mr. Chapin for the books, or for such information as would enable you to prepare an exhibit or exhibits in response to the questions asked you; and how many times since have you called upon him for such information?

469 A. I was not requested to call upon him until the 27th of July. I called upon him the same day that I got the notice requesting me to call upon him. I was then informed that they were extremely busy in making up their statement, and could not assist me at that time. Then, shortly after, I went there and the clerk was having his vacation. I have since met him in the street—Mr. Chapin's clerk, Mr. Northam—perhaps eight or nine times, and he has said they have been so busy that they could not assist me, but would take hold of it shortly. I always kept myself in readiness to take hold of the thing as soon as I could have their assistance with the books. I never saw any disposition on the part of Mr. Chapin to evade giving me possession of the books or every facility.

Q. Were you or were you not requested by J. H. Parsons to obtain from the books a list of the notes outstanding on the first day of each January from 1852 to 1868, this request being made on the 27th day of July, 1869?

A. I was so requested.

Q. How soon after the receipt of that request did you call upon Mr. Chapin to obtain the information thereby sought?

A. I think it was the same day. It was certainly the day after, if not the same day. I should be willing to state the same day.

Q. Since then, as I understand you, you have been prepared and ready to make out the list, and you have made frequent applications to Mr. Chapin or his clerks; and the only reason why you have been unable to return the exhibits called for to-day is the fact that he and his clerks have been so much occupied with other business that they could not furnish you with the books, or give you such assistance as you required in preparing the same. Is that so, or otherwise?

A. Mr. Chapin was always ready to give me the books. They could not afford me the assistance I required owing to their press of business.

(Mr. Parsons, for the complainants, moves that the master order and direct the Atlantic De Laine Company forthwith to furnish Mr. Balch, the accountant heretofore appointed in this case, with all the necessary means in the form of books, papers, accounts, vouchers, or other-
470 wise, which may be necessary to enable him, as accountant, to return an exhibit to the master containing a complete and full list of all the notes outstanding against the Atlantic De Laine Company on the first day of January of each year, from the first day of January, 1852, until the first day of January, A. D. 1868.

The counsel for the claimants leaves the foregoing motion, without moving upon the same, until the next meeting before the master.

Adjourned to meet at the call of the master.)

JULY 29, 1869.

GEORGE W. CHAPIN, sworn.

Direct-examination by James H. Parsons, esq.:

Q. Who were the original subscribers to the stock of the Atlantic De Laine Company, and how many shares of stock were subscribed for by each?

A. Charles T. James; Hill, Carpenter & Co.; Hoyt & Tillinghast; Hacker, Lea & Co.; Dodge, Tucker & Co.; The Globe Printing Company; Harrison & Co.; Day, Owen & Co. Charles T. James subscribed for one hundred and fifty shares; Hill, Carpenter & Co., for thirty shares; Hoyt & Tillinghast for twenty-five shares; Hacker, Lea & Co., for twenty-five shares; the Globe Printing Company, for twenty-five shares; Dodge, Tucker & Co., for fifteen shares; Harrison & Co. for ten shares; and Day, Owen & Co. for three shares.

Q. When were certificates of stock first issued, and to whom were they issued

A. In January, 1854. To Hoyt, Tillinghast & Co., twenty-five shares; Hacker, Lea & Co., twenty-five shares; Globe Printing Company, twenty-five shares; Hill, Carpenter & Co., thirty shares; Dodge, Tucker & Co., fifteen shares; Day, Owen & Co., three shares; Atlantic De Laine Company, special stock and mortgage account, one hundred thirteen shares.

Q. Will you state from the books of the company the history of the several shares of stock subscribed for, or for which certificates
471 were issued, from the time the organization of the company, and from the issue of the certificates to the date of the decree.

A. The twenty-five shares of Hoyt & Tillinghast, and the twenty-five shares of the Globe Printing Company, are still owned by their successors. The twenty-five shares of Hacker, Lea & Co., were transferred by them to the company in November, 1859. In October, 1861, nineteen of them were transferred to Hoyt & Tillinghast, and Hoyt, Spragues & Co., and are still owned by their successors. At the same time the other six shares were transferred to Josiah Chapin, and are now owned by him. The thirty shares of Hill, Carpenter & Co., were bought by George W. Chapin at auction. Twenty-two of them are still owned by him, eight are owned by William B. Green. The fifteen shares of Dodge, Tucker & Co., were transferred by their successors to the company in December, 1862. In June, 1864, they were transferred to George W. Chapin, who still owns them. The three shares of Day, Owen & Co., were transferred by them to the company in July, 1855, and by them to Hoyt, Tillinghast & Co., in October, 1861. They are

now owned by Nehemiah Knight of that firm. The one hundred and thirteen shares issued to the Atlantic De Laine Company, special stock and mortgage account, were the one hundred and thirteen shares transferred by L. B. Frieze, March 9, 1853, to the Atlantic De Laine Company, and George W. Chapin, trustee. The fifty-seven shares belonging to the trustee were transferred in March, 1855, as follows:

To Hill, Carpenter & Co., fourteen shares; to the Globe Printing Company, twelve shares; to Hoyt, Tillinghast & Co., twelve shares; to Hacker, Lea & Co., twelve shares; to Dodge, Tucker & Co., seven shares. The other fifty-six were at the same time issued to the company. The fourteen shares of Hill, Carpenter & Co., were transferred by their attorney to the company in May, 1861. In June, 1864, they were transferred to George W. Chapin and Edwin Hoyt, and are now owned by said Hoyt and Nehemiah Knight. The twelve shares of Hoyt, Tillinghast & Co., and the twelve shares of the Globe Printing Company are still owned by their successors. Of the seven shares of Dodge, Tucker & Co., four are now owned by their successor, A. Tucker. The other three were transferred to George W. Chapin in December, 1862, who now
472 owns them. The twelve shares of Hacker, Lea & Co., were transferred to the company in November, 1859. In October, 1861, they were transferred to Dodge, Tucker & Co., Dodge, Newton & Mills, and the Globe Printing Company. In December, 1862, seven of them were transferred to the company, who transferred them in June, 1864, to E. Hoyt, who now ownes them. The other five are owned by A. Tucker and George W. Chapin. The fifty-six shares issued to the company as above, were transferred in October, 1861, to Hoyt, Tillinghast & Co., and the Globe Printing Company, and are still owned by their successors. One share of stock was purchased of the company in 1852 by N. P. Bartlett, who transferred it back to them in August, 1853. They transferred it to A. Tucker, jr., in December, 1862, who still owns it. Of the three hundred shares of the capital stock sixty-three remained unissued until October, 1861, when they were issued as follows:

Four shares to Josiah Chapin, who still owns them. Sixteen shares to the Globe Printing Company, which were transferred to William C. Chapin, and by him to the company in December, 1862, who, in June, 1864, transferred them to the Globe Printing Company, Nehemiah Knight, Josiah Chapin, and A. Tucker, who still own them. Forty-two shares were issued to George W. Chapin, who still owns them. One share was issued to Lewis Mills, and transferred in June, 1863, to A. Tucker, who still owns it.

Q. How many shares of the stock are now outstanding for which certificates of stock have been issued, and by whom were such shares of stock held on the 31st day of December, 1867?

A. Three hundred: Edwin Hoyt, eighty-seven shares; William B. Greene, thirty shares; Nehemiah Knight, thirty-four shares; George W. Chapin, one hundred and two; William C. Chapin, twenty-three; A. Tucker, twelve; Josiah Chapin, twelve.

Q. When did the Atlantic De Laine Company organize under its charter; and will you annex to your deposition a copy of the record of such meeting at which said company was organized?

A. May 22, 1851. I annex a copy of the records of that meeting, marked "S" by the master.

473 Q. Was the amount of the capital stock of said company ever at any time increased? If so, state when.

A. It was not.

Q. Do I understand from you, then, that the capital stock of the At-

lantic De Laine Company is now, and was at the date of the decree, $300,000, and that the same has never been increased or changed?

A. The capital stock is three hundred thousand dollars, and has never been more or less.

Q. Will you annex, as exhibits to your examination, copies of the charter and by-laws of the Atlantic De Laine Company?

A. I will.

Q. Will you state by what authority the Atlantic De Laine Company assumed the right to issue one hundred and thirteen shares as the stock originally subscribed for by Charles T. James on special stock and mortgage account, as you have stated?

A. They were transferred to the company, and George W. Chapin, trustee, by L. B. Frieze, assignee of Charles T. James.

Q. Were they or not transferred, and did they or not come into the hands, possession, or control of said company, under and by virtue of certain instruments of release and settlement, dated March 2, 1853, and referred to in the decree in this suit referring the case to the master, as marked respectively "C" and "D," and which appear on pages 28, 29, 30, and 31 of the printed record in this suit, the same being so described in the decree which was filed November 25, 1867?

A. They were transferred to them by Mr. Frieze on the transfer-book of the company.

Q. Will you produce and annex to your examination a copy of the record on the transfer-book by which said shares of stock were transferred to the Atlantic De Laine Company?

A. I will.

Q. Were or were not said shares of stock so transferred by Frieze, assignee of Charles T. James, at or about the time, and in consequence of the execution of the instruments of release and settlement, dated March 2, 1853, referred to in the decree?

A. They were.

Q. Had any certificates of stock been issued to Charles T. James or L. B. Frieze, assignee of Charles T. James, at the time of said alleged transfer?

474 A. There had not been.

Q. Why, then, do you say that Frieze transferred certain shares of stock to the company as assignee, if no certificates of stock had been issued?

Mr. PAYNE. This question is objected to as calling for the opinion of the witness upon a question of law; it already appearing from the record what was actually done.

The complainant's counsel replies to this objection, that nothing appears in the record as to what has been done, but there is simply the statement of the witness that certain shares of stock were transferred, and nothing further.

A. As payments were made on the stock subscriptions, each party was credited with the amount they paid on the books of the company. James's stock-account had been credited with one hundred and thirteen thousand dollars, which entitled him to one hundred and thirteen shares of stock.

Q. Is that the whole answer you propose to make to that question? If so, I repeat the question.

A. What part haven't I answered. If you will separate it.

(The former question is read to the witness.)

A. That is why. That was on the books of the company to James's credit.

Q. Then, your only reason for the reply which you have made is, that there was so much credited on the books of the company, as I understand you?

A. And it was understood by Frieze that that was what he was entitled to.

Q. Has not the settlement with Frieze which resulted in the instruments of March 2, 1853, been declared by the court to be void for fraud?

(Mr. Payne objects to the question as calling for an answer to what appears of record in the case.)

A. I will refer to the decree.

475 Q. James subscribed for one hundred and fifty shares of stock, did he not?

A. He did.

Q. And he was present at the organization of the company, May 22, 1851, was he not?

A. He was.

Q. There are now, as I understand you, three hundred shares of stock outstanding, are there not; and you have stated the proportions in which they were held, December 31, 1867, have you not?

A. I have, in my answer to question four.

Q. Mr. Balch, in exhibit marked "R," by the master, states the estimated value of goods in the hands of Hoyt, Sprague & Co., on the 31st day of December, 1867. If the books show the value of the goods in the hands of Hoyt, Sprague & Co., on the 31st day of each December, from 1858 to 1866, will you please produce a statement of the same, so far as the same can be ascertained from the books?

A. Hoyt, Sprague & Co. had goods on hand of the value stated below on each date:

December 31, 1858	$19,447 65
December 31, 1859	36,561 07
December 31, 1860	27,114 94
December 31, 1861	24,249 13
December 31, 1862	72,704 95
December 31, 1863	71,616 32
December 31, 1866	627,355 93

The statements for December, 1864, and December, 1865, I do not find.

Q. Did the Atlantic De Laine Company ever have any account of the goods on hand or the value thereof in the hands of Hoyt, Sprague & Co., December 31, 1864, and December 31, 1865?

A. I do not think they did, but am not positive.

Q. It appears from Mr. Balch's Exhibit R that the indebtedness to Hoyt, Sprague & Co. December 31, 1864, was nearly three hundred and eighty thousand dollars, and December 31, 1865, was nearly one million dollars. Do you mean to swear that the Atlantic De Laine

476 Company kept no account, and that its treasurer is now unable to state whether there was or was not any amount of goods of any value in the hands of Hoyt, Sprague & Co. at those dates?

A. Oh, no. They kept an invoice of all shipments made to Hoyt, Sprague & Co. There was a large amount of goods in their hands on each of those dates. But it was not until 1866, if I recollect correctly, that they rendered us a regular stock-account of goods on hand, with their value at the end of each year. The goods they had on hand in 1864

and 1865 were almost entirely worsted goods, which were of uncertain value, and it wasn't till December, 1866, that a valuation of goods belonging to worsted account was made, either of those in their hands or at the mill.

Q. Did the value of goods in their hands on the 31st days of December, 1864 and 1865, come anywhere near in value the amount of indebtedness to them?

A. I cannot answer that.

Q. From your knowledge of the goods as you manufactured them, or as they were manufactured under your superintendence as treasurer, how near, in your judgment, did their value approximate to the amount of the indebtedness?

A. I could not say.

Q. Are Hoyt, Spragues & Co. the exclusive selling agents of the Atlantic De Laine Company now, and how long have they been such exclusive selling agents?

A. They are now, and have been since, I think, 1863.

Q. Prior to that date did they sell the majority of the goods made by the Atlantic De Laine Company?

A. I think they did.

Q. Was the indebtedness to Hoyt, Spragues & Co., appearing in Exhibit R, filed by Mr. Balch, a continuation of the account for drafts, advances, &c., with Hoyt, Tillinghast & Co., the predecessors of Hoyt, Spragues & Co., and did the indebtedness of Hoyt, Spragues & Co., originate in the indebtedness to the firm of Hoyt, Tillinghast & Co.?

A. It was not.

Q. Was the account with Hoyt, Tillinghast & Co. wholly settled up before the indebtedness to Hoyt, Spragues & Co. commenced?

A. I think it was.

477 Q. It appears from Exhibit R, filed by Mr. Balch, that on December 31st, 1863, Hoyt, Spragues & Co. owed the Atlantic De Laine Company over twelve thousand dollars. Will you state why and how the Atlantic De Laine Company came to owe them the amount appearing in Exhibit R as due to them in December 31, 1864, and so on increasing each year to December 31, 1867, when the sum amounted to over twenty-seven hundred thousand dollars?

A. They made the advances at the request of the company, for the purpose of carrying on its business.

Q. It appears from the account which you have filed before the master, and to which you as treasurer have sworn, that the Atlantic De Laine Company made gains between December 31, 1855, and December 31, 1864, amounting to over eleven hundred thousand dollars. Were those gains applied to carrying on the business of the company in any manner?

A. I suppose they were.

Q. In what way? How were they so applied?

A. Some four hundred thousand dollars of said gains was lost in 1865, 1866, and 1867. There was an expenditure from 1863 to 1868 of over fourteen hundred and seventy thousand dollars for buildings and machinery. It also required a very large amount of money for the purchase of wool, &c., &c.

Q. It appears from your account that there was a gain on the 1st of January, 1855, of nearly thirty thousand dollars. How was that used, what was done with it, or was it allowed to remain on interest?

A. I cannot tell without referring to the books.

Q. Can you answer any question relating to the gain made by the corporation between 1855 and 1865?

A. Not satisfactorily to myself without referring to the books.

Q. In Exhibit P, filed by Mr. Balch, it appears that on the 3d of October, 1861, one hundred and eighty-six shares of the three hundred of the capital stock were divided among different parties, whose names appear in that exhibit. Will you state what proportion of the shares originally subscribed for by Charles T. James in the stock of the Atlantic De Laine Company were included in that division among said parties?

A. That is beyond my ability.

478 Q. Can you not trace through the stock-ledger or other books of said company the shares of James, and can you not state how the stock came to be so divided?

A. I can trace the one hundred and thirteen shares which were transferred to the company by Mr. Frieze.

Q. Can you state when, where, and how, from the books or records of said company, the company became possessed of one hundred and eighty-six shares to divide among the persons named in that exhibit? And if so, will you do so, and make your statement to the master?

A. I think I can, and will do so if able.

Q. In what form or manner does the indebtedness to Hoyt, Sprague & Co. appear upon the books of the Atlantic De Laine Company?

A. It appears to their credit on the ledger.

Q. Did Hoyt, Sprague & Co. accept the drafts of the Atlantic De Laine Company on them?

A. They did.

Q. Did they take any security, either in the form of the notes of the Atlantic De Laine Company or otherwise?

A. They did not.

Q. Were drafts drawn against goods in their hands?

A. There were.

Q. At what time were drafts ordinarily drawn?

A. On both four and six months.

Q. Were they discounted; and if so, by whom?

A. They were discounted at bank, and by other parties.

Q. What security have Hoyt, Sprague & Co. for the advances made by them to the Atlantic De Laine Company?

A. All the property of the company was liable for the indebtedness of the company.

Q. Did Hoyt, Sprague & Co. in any manner, directly or indirectly, hold any security, of any kind or character, whether in the form of notes of the company or of notes given by its individual stockholders, or of stock transferred as security, or did they in any other manner hold security independently of the goods in their hands for the advances made by them, or for the drafts which they accepted, which were drawn upon them, as you have stated, by the company?

479 A. They had direct possession of no other security but the goods in their hands.

Q. Do the drafts drawn from time to time on Hoyt, Sprague & Co. appear on the bill-book of the company?

A. They appear on the books of the company; whether on the bill-book I cannot say here.

Q. Did all the indebtedness to Hoyt, Sprague & Co. arise from drafts drawn on them by the company?

A. I think it did.

Q. Did the company ever give its notes to Hoyt, Sprague & Co. at any time?

A. They might have done so prior to 1863.

Q. For what purpose were they given, if at all?

A. As collateral of drafts.

Q. As collateral of drafts drawn on them?

A. Yes.

Q. To what amount were said notes given, and at what times up to December 31, 1867?

A. I can only answer that by reference to the books.

Q. Will you ascertain from your books the whole amount of notes so given, and the time and date of each, and produce the exhibit before the master?

A. Yes.

Q. Was the Atlantic De Laine Company in any manner liable to Hoyt, Sprague & Co., or to any person or persons, for the indebtedness due to Hoyt, Sprague & Co., except as they were the drawers of drafts upon said firm, up to December 31, 1867?

A. They were liable to the endorsers of the drafts on Hoyt, Sprague & Co.

Adjourned.

SEPTEMBER 16, 1869.

Examination of Geo. W. Chapin resumed by Mr. Parsons:

Q. Have you, since your last examination, examined the bill-
480 book of the company, and will you now state whether the drafts drawn from time to time on Hoyt, Sprague & Co. appear on the bill-book of the company?

A. They do appear on the bill-book of the company.

Q. You were asked in your last examination to produce certain exhibits in reply to questions asked at that time. Are you now prepared to produce those exhibits, and will you produce them in the order in which they were asked for, and file them with the master?

A. I will. Here is a copy of the charter and by-laws (marked by the master "Exhibit T.") I produce also the transfer of L. B. Frieze, assignee, of one hundred and thirteen shares of stock to the Atlantic De Laine Company, dated March 9, 1853, (marked by the master "Exhibit U.") I produce also a statement from the books of the whole amount of notes given to Hoyt, Sprague & Co. up to December 31, 1867, (marked by the master "Exhibit V.") The company became possessed of the one hundred and eighty-six shares, which were divided among the persons named in Exhibit P, as follows:

Fifty-six shares were received from L. B. Frieze, March, 1853. One share was transferred by N. P. Bartlett, August, 1853. Three shares were transferred by Day, Owen & Co., July, 1855. Thirty-seven shares were transferred by Hacker, Lea & Co., November, 1859. Five shares were transferred by Lewis Mills, April, 1860. Seven shares were transferred by P. Tillinghast, May, 1861. Fourteen shares were transferred by attorney of Hill, Carpenter & Co., June, 1861. Sixty-three shares were shares which had not been previously issued, and which made up the stock-account to three hundred shares.

Q. You state that fifty-six shares held by L. B. Frieze, assignee, were by him transferred to the company. It appears from Exhibit U that he transferred to the company one hundred and thirteen shares. What became of the other fifty seven which he transferred to the company?

A. They were divided among the parties of whom George W. Chapin was trustee.

Q. Do the records of the company show that those fifty-seven shares were divided among the several parties after they had been transferred to the company by Frieze?

A. They do.

481 Q. Will you obtain from the books and annex to your deposition a statement of the precise manner in which these fifty-seven shares were divided?

A. I will.

Q. Now, will you, from the bill-book of the company, or from any other book which may throw light upon the subject, obtain and furnish to the master an account or list of the drafts drawn from time to time by the Atlantic De Laine Company on Hoyt, Sprague & Co.?

(Question left unanswered for the present.)

Adjourned.

NOVEMBER 20, 1869—3 p. m.

Mr. Parsons files motion for leave to amend the account of the plaintiffs, marked "Exhibit D;" also his own affidavit as to said account D.

The motion is received with the understanding that the question whether or not it is competent for the plaintiffs to establish a claim larger than that already on file, is left open, to be argued hereafter, and, generally, subject to exceptions.

Mr. Balch recalled.

By Mr. Parsons:

Q. Mr. Balch, will you please examine the paper marked "Statement, vouchers of building-account, De Laine Mill," and state whether you prepared the same, and from what you prepared it?

(Objected to. Answered subject to objections.)

A. This statement was prepared from these vouchers. I merely took those vouchers and made this statement from the whole of them; and that is the footing. This bundle of vouchers was handed me by Mr. Parsons with the request that I would make off a statement, and this is it—a synopsis.

Mr. PAYNE. It is an analysis of those vouchers?

A. Yes, sir.

482 Mr. PARSONS. I don't know of anything more to ask Mr. Balch.

Cross-examination by Mr. Payne:

Q. Mr. Parsons brought you a bundle of vouchers, and requested you to examine them and make out a list of them with the respective amounts?

A. Yes, sir.

Q. And you did it, and this is the list?

A. Yes, sir.

Mr. HART. That purports to be Mr. Balch's account made up from vouchers, showing that the claim is $182,000. Of course this is in the same predicament with everything else, for that matter. This paper must stand with the others as handed to the master, subject to all objections.

WILLIAM J. HARRIS.

Direct examination by Mr. Parsons:

Mr. Harris, will you examine the package of papers now shown you,

and state, if you know, what they are, and what connection you may at any time have had with them, or with collecting them together?

A. This is the bundle that I had in my office, I suppose.

Q. Yes, sir; the same one.

A. I looked them over in my office.

Mr. PAYNE. Mr. Harris will make his statement subject to objections.

A. These appear to be papers, some of which have my mark, handwriting about them, that I recognize as papers used in making up an account for General James some ten or fifteen years ago. Whether these are all the papers or not I can't say, or whether all the papers here were entered on that account, I can't say.

Mr. PAYNE. You had a bundle of papers which you used in making up an account for General James, and among the papers which you used you recognize some of these?

A. Yes, sir.

Mr. PAYNE. But whether all you had are here, you are not sure?

A. Perhaps I had better state more explicitly. General James
483 asked me to come to his office, and gave me the key of his safe, and said: "There are all my papers and books; and what isn't there is about the office"—all the papers in his office; and wished me to take all those papers, examine them, and from his books and all his papers which were there to make up an account. I took those papers and those books, and canvassed each paper, and examined all the books; and everything that I found that I satisfied myself belonged to the construction, the building of the De Laine Mill, I put into that account. I put in nothing but what I was satisfied did belong to it. What the amount of that account was has now passed from me. The best figure that I can get into my mind was about $386,000; somewhere up along there. Whether I found all the papers that related to that I can't say. All that I did find I put in. All that I didn't believe belonged to that mill I rejected. I saw in this bundle I was looking over the other day, one paper that was entered on the books of the De Laine Mill; I rejected it as belonging to . There were papers for other mills in the office. I examined them, and satisfied myself that all that I put into that account did belong to the De Laine Mill. The others I rejected. I don't think I saw General James while I was doing it. He gave me the papers, and told me to make up the accounts. I was there three weeks, I should think, all alone in his office.

Q. Were the vouchers, which you have just examined, among those used by you in making up the account.

A. Yes, sir; I see papers here that have got my mark on, and some that I recognize. I see marks and memorandums on them; some pay-rolls that are marked a thousand dollars or more. A part of it would be in one department, and part in another; and part was daily labor, paid by him, and the other part of it would be for money paid to contractors and other parties that had accounts, and that appeared in their account. For instance, Col. Buckley had $500, and Ray Clapp, $200, and then there would be divers individuals, daily and weekly pay-rolls, and those would go into the pay-rolls, while the others would go in as Bucklin's or Ray's account. I also during the time examined the books of parties that had accounts. I think I went to the Phœnix Iron-Foundry, and Tallman and Bucklin's to satisfy myself about some item.

484 Q. Well, were all the papers that you find there used by you in making up that account?

A. I can't tell from these papers whether they were on that account or not, without I had the account to examine. This is the kind of paper that I had, and a great many of them have got my mark on, and some have not.

Q. Were those vouchers and papers in that file that do not contain your mark used by you in making up that account?

A. I don't know.

Cross-examination by Mr. Payne:

Mr. Harris you were employed by Gen. James to go into his office, and from his papers to make up the construction-account of the De Laine Mill?

A. Yes, sir.

Q. Amounting, to the best of your recollection, to $386,000. Do you know where that account is?

A. No, sir.

Q. How long since you saw it?

A. I haven't ever seen it from that time to this.

Q. You gave it to Gen. James?

A. Yes, sir.

Q. And haven't seen it since; about when was that made up?

A. I couldn't tell you.

Q. Could you tell whether it was earlier than 1859—more than ten years ago?

A. There is no circumstance which can bring the date to my mind.

Q. And from the time when you made it up and gave it to Gen. James, you knew nothing of it?

A. No, sir.

Q. Who brought this bundle of papers to you recently for examination?

A. Mr. Parsons.

Q. You don't know from what custody he brought them?

A. No, sir.

Q. And among them you find papers which contain marks of yours, indicating that they were used in making up that account?

485 A. Yes, sir; I have no doubt they were.

Q. But whether they were all so used you don't know, and whether others not here were used, you don't know?

A. That I couldn't tell.

WILLIAM H. PARKHURST.

Direct examination by Mr. Parsons:

Q. Were you ever in the employ of General James?

A. I was.

Q. Did you continue in the employ of his assignee after his assignment?

A. I did.

Q. Were you familiar with the business relating to the construction of the De Laine Mill, both that of General James and that of Mr. Frieze as his assignee?

A. Yes, sir; I believe that about all, I don't know but all, the bills, after I went into the office, passed under my hand.

Mr. PAINE. The witness is now volunteering matters which I object to.

Mr. GREENE. We object to the examination of this witness generally, as bearing upon that account.

Q. Did you from time to time, in the course of your employment by General James, have occasion to examine the several accounts presented by the various persons employed in the construction of the mill and of the works generally, which was done in and about its construction?

Mr. PAINE. What is the object of your examination?

Mr. PARSONS. To prove this account for extra work.

Mr. PAYNE. I object to the proof at all, and I object to the examination of this witness in this manner in proof of the account, because it is not the best evidence.

A. I did.

Q. Will you examine the papers, purporting to be vouchers, now shown you, and will you state whether among them you recog-
486 nize accounts rendered to General James, or to his assignee, Frieze, for labor connected with the construction and equipment of the De Laine Mill?

Mr. PAYNE. I object to that question. In the first place, I want this account proved in the regular way. I want legal evidence of it. I don't want anything to go into the case unobjected to, which would, passing in unobjected to, have any weight in the mind of the master; and I am particularly careful about this particular witness, who has been examined before in the case, and whose relations to General James I understand perfectly well, and whose previous testimony in the case I know all about. And both for the reason that I want strict legal evidence about this account, and because I want the testimony of this witness to be carefully scrutinized as it goes along, and his means of knowledge tested, I make this objection in limine. They put into his hands a bundle of papers, which we have not seen and know nothing about, and ask him if he recognizes there accounts which were rendered by parties to General James in the course of the construction of that mill. I prefer that he should take a paper, hand it to the witness; and I should know what papers he is being examined about, that I may cross-examine him. I don't want him under cover of this general question to go on putting in general statements which, unobjected to, may have weight in the mind of the master. He has already given evidence of a disposition to testify faster than Mr. Parsons wants him to, and that is fast enough in all conscience. I want a question put to him that would be a proper question if used on the stand before a jury. I think it the duty of the complainant to prove his account by items. This witness is in no position to swear that this account was made out by him and known to be correct.

Mr. HART. Have you anything to say, Mr. Parsons?

Mr. PARSONS. No, sir, except that I think we have the right to ask him the question.

Mr. HART. You might, possibly, be admitted to ask him the simple question whether he recognizes papers in that file he has ever seen before. But if he is going on to undertake to establish in any mode or manner, or say anything tending to establish the correctness of
487 any one of the vouchers in that file, which, of course might be one step in proceeding to prove the amended item, that is what it has already been ruled cannot be done at present, and that matter is open as to what you shall be permitted to prove. Of course I couldn't tell when you were calling his attention to any particular voucher here to extract from him something tending to establish its correctness, whether that would be tending to prove the amended account or the

original. Therefore I don't see how you can go into that matter until the other is settled.

Mr. PAYNE. I don't object to Mr. Parkhurst's testifying de bene to this account. On the contrary, I should rather like to see just how much he does know about it. But my objection is to the form of getting at it. Now, subject to all exceptions, I have no objections to Mr. Parkhurst's stating what he knows.

In the first place, if I understand the testimony of Mr. Balch, here is a list of the papers which were in the hands of Mr. Parkhurst, made off by Mr. Balch. Now, that list includes all the items in the $79,000, and all the items in the $182,000. Now, inasmuch as the $79,000 has not been itemized, it seems to me a practical impossibility for anybody to distinguish among these items which are included in the $79,000 and which in the $182,000; and that may give rise to the necessity of another motion which I have in my mind to make in the case for Mrs. James to comply with. Now, I object to the admission of the testimony at all as irrelevant and not pertaining to the case. But I don't object to Mr. Parkhurst's being examined about those papers here, if, for instance, Mr. Parsons will take this paper of Mr. Balch's, call Mr. Parkhurst's attention to the first item in it, and find out what he knows about it. Subject to all exceptions, I should rather like to have that thing done.

Mr. HART. Of what service would it be to the master for Mr. Parkhurst to take up that list and go through it and give me all his knowledge about it at this stage of the proceedings, when the question is open as to whether the complainant shall be permitted to prove any such account as $182,000? When that question comes to be raised before me, that may be a very probable objection that the respondents may take to his undertaking to prove any such charge. The bill
488 is not preserved, or no account is preserved, to show which of these items made up the $79,000. Until that question is disposed of, it is a mere waste of time to undertake to examine Mr. Parkhurst as to his general knowledge of all these items.

Mr. PARSONS. I think there is some misapprehension on your part as to this $79,000. General James, at the request of his counsel, for the purpose of enabling General Cushing in his argument to make use of it, prepared a rough estimate, very hastily, of what was, as near as he could get at it, the amount of his claims for labor and machinery furnished outside of his contract. That document prepared by him was by him handed to General Cushing. I have seen the original myself, and know it was his, because it was his handwriting. I have been informed by Mr. Jenckes that that was prepared at their request, very hastily, not from anything except memoranda and his own recollections, as near as he could get at it, of the amount which he claimed. It was not in the case except as used by counsel in argument; and as I put it in now, she proposes to put in what she claims was the true amount of it. Her husband stated it as near as he could get at it at the time, without the aid of his books. In addition to that, he had prepared, as his wife swears, a full and complete account of his claim. That account was, as she says, and as she knows, and as I have no doubt Mr. Harris knows, drawn off in a book which was used at the former trial. Since that time it has been lost. Where it has gone I don't know. Now, I am undertaking to prove what she says is a true account, and I am debarred from undertaking to prove it because at one time a scrap of paper, hastily prepared by General James from memoranda and not from books, is used in the argument of the case. I never saw the ac-

count that was in that book as drawn up, and for that reason it is objected that I cannot go into this account and show what the real amount of the claim is, for the reason that the counsel at one time in the course of the argument made use of a scrap of paper upon which he put certain figures.

Mr. HART. The master has not ruled upon that.

489 Mr. PARSONS. I know he has not. I took those vouchers which I was informed by Mr. Jenckes and Mr. Hammond were the vouchers constituting the amount entering into this claim.

Mr. HART. The master has already told you he is ready to hear that question now or at any future time. I do not rule upon it until counsel have argued that on both sides. Until that the question is open.

Mr. PARSONS. Then, if your honor pleases, I desire that the meeting adjourn until I can compel Mr. Jenckes, if I can, to come here and dispose of that question for himself.

Mr. HART. If the master should come to the conclusion that this account cannot be admitted, you must be left, of course, to prove your account as you originally filed it, in your own mode.

Mr. PARSONS. Then I move that the proceedings be supended for the present.

Mr. HART. At the next meeting we will be prepared to hear you as to the admissibility of this amended account.

Mr. PARSONS. I want to have an understanding about this. This testimony has been taken subject to this objection. I presume now, as the question of the admissibility of this account is to be passed upon, it will come up without reference to the testimony that has been taken to-day, upon my motion to file the account.

Mr. PAYNE. I shall probably file a motion with the master on Monday which will subsoil this motion of yours.

Adjourned to meet at the call of the master.

MARCH 29, 1870.

GEORGE W. CHAPIN recalled.

Direct examination by Mr. Parsons:

490 Q. Was there a meeting of the directors of the Atlantic De Laine Company holden on the 4th of September, 1868; if so, will you produce a copy of the proceedings at such meeting, taken from the records?

A. There was such a meeting, and I produce a copy of the records of that meeting. (Marked "Exhibit Y.")

Q. Will you state the date of the meeting of the directors of the Atlantic De Laine Company, which was holden next before the one of the 4th of September, 1868?

A. May 6, 1853.

Q. Was there a meeting of the stockholders of said company holden on the 4th of September, 1868; if so, will you produce a copy of the proceedings of that meeting?

A. There was a meeting held on that day, and I produce a copy of the records of said meeting. (Marked "Exhibit Z.")

Q. When was a meeting of the stockholders of the De Laine Company holden next before that of September 4, 1868?

A. October 3, 1861.

Q. It appears from the copy of the record filed that L. B. Frieze was notified of the stockholders' meeting of September 4, 1868. Was he or not notified of that of October 3, 1861?

A. He was not notified of that of October 3, 1861.
Q. Was his assignor, Charles T. James, notified of that meeting?
A. He was not.
Adjourned to April 6th at 3 p. m.

APRIL 28, 1870.

LUCINDA JAMES.

Direct examination by Mr. Payne:

Q. Mrs. James, from what sources did you make up the account which you have filed in this case, and which is marked "Exhibit D?"
A. Well, sir, they are matters that were in my lawyer's hands that were made up by my husband.
Q. Do I understand that this account was made up by your counsel, and signed and sworn to by you?
A. It was made up by my husband, or through his dictating, and they were in the hands of my lawyer.
491 Q. This particular paper; (D;) in whose handwriting is that?
A. I couldn't tell you, sir, in whose handwriting that is, because it is a paper that was made out in my husband's life.
Q. Don't you know who made up this particular paper which you have signed and sworn to?
A. Yes, sir, we have signed and sworn to this, but we copied this paper.
Q. This is an original paper; that is your signature, and there is your oath that it contains a true statement of the account. Where did that paper come from, as far as you know?
A. Where did it come from as far as I know? It came to me from my lawyer.
Q. Do you mean Mr. Parsons?
A. No, Mr. Jenckes.
Q. You mean that Mr. Jenckes gave you that paper.
A. The papers were all in Mr. Jenckes's possession that were made up for the case.
Q. I don't think you understand my question, Mrs. James. I will try to make it a little plainer. Here is an account which is signed by you. There is your signature, and you came before the master and made oath that it was a true account, as he certifies. Now, my question is, where did you get that paper? You came before the master and swore to it. Now, where did you get it?
A. I got that paper from Mr. Parsons,
Q. Who furnished Mr. Parsons, so far as you know, with the materials with which to make up this account?
A. He furnished himself from the papers that were left with Mr. Jenckes—papers that were collected for the case through my husband and Mr. Jenckes; and Mr. Parsons had those papers; and Mr. Parsons, as you know, has worked for me; so that, of course, Mr. Parsons gave me that paper.
Q. Then, if I understand you, Mr. Parsons made up from materials in his hands this account, and exhibited it to you, and you made oath to it?
A. I did, as to its being right, to the best of my belief, knowing that my husband had made out those papers. I never looked them over particularly, but, knowing that he did do it, I made oath to the best of my knowledge and belief.
492 Q. Now, did you yourself, before you filed and swore to this ac-

count, examine any of the papers from which you say it was made up by Mr. Parsons? Did you look at the materials, the papers left by your husband in the hands of his counsel, Mr. Jenckes, and make any examination of them before you swore to this account?

A. Not entirely. What we supposed was required at that time, and Mr. Parsons showed me from time to time; and I looked over them, as he held them in his possession. I didn't take them into mine.

Q. Did you have any knowledge about this account—have you any knowledge about this account except what you derived from the examination of these papers in the hands of your husband's counsel and your counsel, Mr. Jenckes and Mr. Parsons, and from their statements to you of what your husband had stated to them? In other words, did you, Mrs. James, personally know anything about the transactions referred to in this account at the time when they took place?

A. At the time that the original account was made up particularly for this case?

Q. No. For instance, the first item in this account is $260,000 for the building contract. Now, did you know anything about that contract or the terms of it at the time it was made?

A. I suppose about as much as every good-natured man lets his wife know of those things. You know they don't let them out very particularly. There are very many circumstances by which I remember it very well indeed, and I remember a great many things going on before it was completed, a great many things that I heard; very many things I could tell you, a great many, but probably not very much connected. But I knew very well about it, and heard it talked over a great deal, and when the case was made up; and I heard a great deal about it. That is, I didn't take the papers, but I know what was——

Q. On the other side of the account are certain credits. Did you have any other knowledge of those payments made to your husband than the same kind of knowledge that you had about the contract which you have just described. In other words, when a particular draft was paid to him, for instance, did you have any knowledge yourself about it?

493 A. I don't think that I did, sir. My knowledge—what I rely upon, is our papers which we found made up by those I had confidence in and believed were right.

Q. The first item in this account is $260,000, amount of contract for the building. Now, what do you know personally about that?

A. What do I know personally about it?

Q. Yes, of your own knowledge.

A. I know that there was a contract made.

Q. It was in writing, wasn't it?

A. The contract shows for itself—for the De Laine Mill.

Q. You say you know there was a contract in writing?

A. I know that there was a contract for the mill. I don't say that I know it was in writing. I presume it was.

Q. Haven't you seen the written contract?

A. I presume I have. It has been a good while, Mr. Payne, and the papers haven't been in my possession.

Q. How long since you have seen any of the papers in this case?

A. I have seen all the papers that it has been necessary for me to see.

Q. Are you certain whether you ever saw the contract or not?

A. I think I have seen the contract, but to-day I wouldn't say, Mr. Payne. At any rate, I know there was a contract entered into to build

the mill, and I know it was attempted to be built, and I suppose succeeded. At least, if I were to believe all the men told me at the time I should say so. I know that much. I rely on the papers that were made up, and my counsel, that are better able to understand it than I am.

Q. You were not present with the other parties to this contract—the gentlemen who afterwards became the Atlantic De Laine Company, and your husband—when this contract was made, were you? You were not in the room, were you?

A. I suppose they were sort of Masons. They didn't allow women round. No, I was not.

Q. Then all you know about the contract you know from what your husband or his counsel or some other person has told you?

494 A. You can put it in just what light you have a mind. He told me there was a contract, that he had made a contract, all the particulars, at the time; I couldn't repeat them now. I know that Mr. Chapin was there at the house very repeatedly, and I heard both occasionally, and it all tended to building a mill.

Q. My question is simply this, and all I wish is to have the answer go on record as you mean to make it: You derived your information about this contract from what your husband told you, and from the statements of his counsel?

A. Yes.

Q. Then as to this charge for extra work being $79,973.56; you derive your information about that in the same way that you do about the contract—from statements made to you by your husband and his counsel?

A. Yes, sir.

Q. And so with the credits in the account. For instance, you credit the Atlantic De Laine Company with a balance due Mr. Chapin of $52,900. You derive your information about that from the same source, from statements, I suppose?

A. Yes, sir.

Q. And so about the drafts. In short, this statement is made up by your counsel from papers in their possession, derived from your husband. And you, believing from information derived from your husband and from counsel, that these statements were correct have made oath to them, to the best of your knowledge and belief?

A. Yes, sir.

Q. Without any personal knowledge about it yourself?

A. No personal knowledge, of course, otherwise than as I was——of course I was not present at the making and signing of those contracts.

Q. Now as to Exhibit CC. Where did you get that paper?

A. I got it from Mr. Parsons.

Q. This specific account was made up in the same way and from the same information as the other account—that is, derived from your husband and your counsel?

A. Yes, sir.

Q. Now, in this amended account, you say that the items which

495 you say are not claimed as due the estate of Charles T. James for work and materials furnished in addition to those called for by the contract, &c., are fully set forth in the statement accompanying Exhibit W, filed with the master, December 2, 1869. Is that (handing W to the witness) the exhibit you refer to?

A. Why, I suppose it is.

Q. Did you ever see that paper before?

A. I think I did. I saw one that looked like it. I took but little no-

tice; didn't know that my attention would be called to it again. I am certain I saw a paper.

Q. Do you know how that paper was made up and who made it up?

A. Mr. Parsons and Mr. Balch, as I understand it.

Q. Then the paper was made up by Mr. Balch from such sources as he had?

A. Yes, sir.

Q. You don't know what they were?

A. I never handled them. That was made up from the vouchers, as I understand it.

Q. But the vouchers you never examined?

A. The vouchers I have not examined. It is rather dry business unless a person was obliged to do it.

Q. I see, in this particular account which you file, you claim $\frac{150}{274}$ of gain in 1855. Please explain to the master the grounds upon which you make that claim. You say you are entitled to $\frac{150}{274}$ of the profit in a particular year. What is the meaning of that claim, as you understand it?

A. I think it was the year that they seemed to have something to divide.

Q. That isn't the point. It is for several years. It says: "Of the gain in 1855, of the gain in 1856, of the gain in 1857, of the gain in 1858, of the gain in 1859," and so on.

Mr. PARSONS. It is ten years.

Q. And you claim $\frac{150}{274}$ of that profit in each of those years. You say that that belongs to you. How do you get at that? Why not $\frac{150}{284}$ or $\frac{150}{300}$? Why do you make that particular fraction?

A. We claim so much of the property; we claim so much of its earnings in the mean time, our proportion of it; and that is the proportion.

496 Q. How do you get at that proportion?

A. You are a little too deep for me there; Mr. Parsons will have to explain that for me.

Mr. PARSONS. I will explain that when I come to it.

Mrs. JAMES. I am not quite deep enough for that. It is unexpected, my being called upon to explain. As I was notified that we couldn't have anything if we didn't make anything, of course we couldn't make anything out of that.

(The reporter reads to Mrs. James her testimony up to this point.)

Q. Have you any such knowledge of the particulars of the contract made between your husband and the Atlantic De Laine Company that you can tell what was included in the contract, and what was extra work—of your own knowledge?

A. Not of my own knowledge. I could not tell, as I told you before; of course it doesn't amount to anything. As I always understood it, all that ell of the building was extra work, and some other buildings.

Adjourned to Thursday, May 5, at 3 p. m.

Testimony of Josiah Chapin.

MAY 5, 1870.

Direct examination by Mr. Payne:

Q. Are you a stockholder in the Atlantic De Laine Company?

A. I am.

Q. How long have you been so?

A. Indirectly ever since its organization. I was connected with

another company that was connected with the Atlantic De Laine Company always, from the beginning. In fact, I have always been connected with it, I suppose.

Q. What was that other company?

A. The Globe Printing Company, of Fall River.

497 Q. You mean to say that the Globe Printing Company was a stockholder in the Atlantic De Laine Company, and you being a stockholder in the Globe Printing Company became such in the Atlantic De Laine Company?

A. Yes, sir.

Q. Have you been a director at any time in the Atlantic De Laine Company?

A. Always, since its organization.

Q. Who was president of the company?

A. I was president from the origin up to a short time since, when I resigned—this year.

Q. You recollect the contract, then, between General James and the company?

A. Yes, sir.

Q. State whether or not that contract was performed within the time; whether the mill was completed within the time limited by the contract.

(Objected to.)

Q. It was not.

Mr. PARSONS. I object to the question, on the ground that it has all been gone into in the main case; that the master is simply taking an account. This matter was passed upon by the court, and the question whether the contract was performed within the time, or not, is not one to be inquired into now.

Mr. PAYNE. I take just the opposite view; that it was not directly involved, and had no direct bearing in the original case. It was set up only by way of illustration of the condition of things between the two parties, as throwing light upon the probability of their entering into a settlement, but it was not a direct issue in the case. On the contrary, it is here: We offer this testimony to prove that the contract was broken, and what the damages were.

Mr. PARSONS. I claim that the matter was set up and fully discussed in the suit originally, and that there is nothing in the decree, nor is

498 there anything to indicate that any such claim was allowed by the court or considered by them; and that is not a proper matter for the master to investigate now.

Mr. PAYNE. None of the items of the account were passed upon by the court in any way. That is what was sent to the master to be investigated.

Mr. HART. There is an item of fifty thousand dollars damages claimed in your account, is there not, on the ground of not fulfilling the contract in time?

Mr. PAYNE. Yes, sir.

Mr. HART. I think the testimony is admissible.

Q. State, Mr. Chapin, what damages, if any, the company suffered by reason of General James' not fulfilling his contract; what the nature of the damages was, and the extent of them, so far as you know.

A. The damages were, that they were unable to go into operation as they would have been if he had fulfilled his contract. It was a long time, as far as my memory serves me, after the time was out before he completed it; and in fact I don't know as he ever did complete it. I am not quite sure about that.

Q. Do you know whether that claim for damages was ever made at the time?

A. It was made repeatedly before the board of directors.

Q. Do you remember the amount of the claim as it was estimated at the time by the directors?

A. I don't think I do. It was a large claim, large damages to the company.

Cross-examination by Mr. Parsons:

Q. Was any claim ever made by the company on General James or his assignee for these damages?

A. I think there was.

Q. When?

A. I don't know as I can say to-day. It was repeatedly talked about with General James and the assignee, particularly the assignee.

499 Q. Was any specification of the deficiencies in the contract ever presented to James or his assignee?

A. I never did it, but I think the treasurer did; think he was directed to do so, and he said he had done it when the board of directors met.

Q. Do you know whether the specification of the deficiencies, which you say may have been presented by the treasurer, was in writing?

A. I do not.

Q. What personal knowledge have you of the extent of damage suffered by the company?

A. I have a knowledge that the business at that time, if I remember, was very good, and that, consequently, the loss of profits was very considerable—profits to the company.

Q. Then, the damage arose from a loss of profits which the company might have made if the mill had been ready?

A. Principally.

Testimony of George W. Butts.

Direct examination by Mr. Greene:

Q. Have you been engaged in brokerage and banking business in the city of Providence?

A. I have.

Q. How long?

A. Since September, 1856.

Q. How long were you a bank director?

A. From 1853 I was connected with the Fourth National Bank, or Continental Bank, as a director, and have remained there ever since.

Q. I will ask you, sir, what has been the rate of commission charged for the endorsement of paper?

A. Two and a half per cent. for six months.

Q. I will ask you whether this rate of commission was charged for endorsement of first-class paper where the endorser was secured by mortgage on real estate, or by collateral-security paper?

A. By both, sir.

Q. Do you mean to say that this rate of commission was charged upon paper of the most undoubted character?

A. It was.

500 Q. Was this an invariable rule, sir, as far as you know; you have always charged it?

A. Yes, sir; charged by bankers in New York, Boston, and here.

Q. I will ask you if the same rate of commission was charged for ac-

cepting paper, paper of undoubted drawers, as was charged for the endorsement?

A. Yes, sir; sometimes it was in the form of an acceptance, or note; at other times in the form of an endorsement. Sometimes the banker would give his own note and sometimes he would accept a draft.

Q. Whether, at an early period of your being bank director, it was not the practice of the banks to require two names to discount paper?

A. Yes sir; it was.

Q. And when you say two names, you mean maker and endorser?

A. Yes, sir.

Q. That is, they wouldn't discount anybody's note upon the credit of the maker alone, however good he might be, but would require an endorser?

A. Yes, sir.

Q. And that party who endorsed the note would charge a commission upon it for endorsing, however responsible the maker was?

A. That depends upon circumstances. Many endorsed without any compensation.

Q. Yes; but where it is done as a business matter?

A. Where it is done as a business matter they charge compensation.

Q. You speak of bankers; isn't it a common thing for business men to sell their endorsements; that is to say, such men as Borden and Bowen, who are not bankers? Was it not customary to endorse paper for a commission?

A. Yes, sir; to a very large amount.

Q. And the practice was common among that class of men was it not?

A. Yes, sir; such men as Duncan, Sherman & Co., William T. Coleman & Co.

501 Q. (By Mr. Payne.) That applies just as well to endorsements as acceptances?

A. Both.

Q. And the usual rate was two and a half per cent?

A. Yes, sir; at six months.

Q. A question has been asked you as to whether it was customary for banks to require two names. I ask you, from your recollection as a director and a business man, whether from 1851?

A. 1853.

Q. That is when you went into the bank?

Mr. PARSONS. That is when these endorsements commenced, isn't it?

Q. I want to know whether, according to your recollection, say from 1851, (you were a business man at that time,) down to quite a recent period, paper could be discounted at a bank in Providence without an endorser.

A. Yes, sir; within the last eight years it has been the custom of most of the banks.

Q. But I mean from 1851 to 1860, or 1858.

A. No; it was uniformly required.

Q. An endorser?

A. Yes, sir.

Q. To make the case exactly pertinent to this, suppose in 1853 the Atlantic De Laine Co. had offered their draft on Hoyt, Spragues & Co., in New York, for discount in your bank; would you have discounted without an endorser?

A. That would have depended entirely upon the credit of the Atlantic De Laine Co. at that time.

Q. If you held their acceptance would you discount the paper?

A. Yes, sir.

Q. And would you discount the paper upon the mere credit of the Atlantic De Laine Co., without relying upon the acceptance?

A. I cannot answer that question, because I don't know about the Atlantic De Laine Co.'s credit at that time.

502 Q. But at that time you said they required other security. They wouldn't have discounted their simple note, would they?

A. No, sir; but if they had considered the Atlantic De Laine Company strong enough, they would have taken the draft without being accepted.

Q. Upon the faith that it would be?

A. Yes, sir; because it would only be a day or two. But many of the banks wouldn't without an endorsement. A good many of them wouldn't take any one's draft without acceptance, unless it was endorsed.

Q. How was it with the Old Providence Bank, where this company did a good deal of their business?

Mr. PARSONS. It isn't proved that they did their business there.

Mr. PAYNE. We expect to prove it.

Q. What was the custom there?

A. I have always understood that the Old Providence Bank used to have an endorser.

Q. Or else the acceptance made before they discounted?

A. Yes, sir.

Cross-examination by Mr. Parsons:

Q. Would the drafts or notes of the Atlantic De Laine Company have been easily discounted without an endorser if collateral had been deposited?

A. Yes, sir.

Mr. PAYNE. What time do you refer to there?

Mr. PARSONS. The time when they required an endorser, of course.

Q. Was the percentage charged greater when there was no collateral than when there was?

A. No, sir. It isn't the custom of bankers to endorse or accept without collateral.

503 Direct examination resumed by Mr. Payne:

Q. In 1851 and 1852, for instance, I understand you that it was customary for banks to discount notes with a single name upon the deposit of collateral?

A. No, sir; that was not the custom. It was not the custom, but they didn't discount single-name paper, but required an endorser.

Q. Mr. Parsons' question was whether they would discount single-name paper if they had collateral—bonds, for instance?

A. Yes, sir; but this referred to the acceptance of the note, as I understand it—to a draft that was offered for discount that wasn't accepted.

Mr. PARSONS. That is what I referred to.

Q. Would the drafts of the Atlantic De Laine Company have been discounted upon the deposit of collaterals, if the bank discounting had not expected the acceptance to be made in due course of mail? Would they take a draft of the Atlantic De Laine Company and bonds as collateral, and discount it and not send it forward for acceptance at all? Would they discount it in that way? Take a draft of ten thousand dollars of the Atlantic De Laine Company on Hoyt, Sprague & Co., and United States bonds as collateral, and hold the draft and the bonds and never present it until the time came for its payment?

A. I think they wouldn't have done that.

Q. They would take the collateral as security for the acceptance?

A. Yes, sir.

Q. Now, to make the matter plain, in 1851, '52, or '53, suppose a man in good credit presented his note at the banks in this city for discount, without any other name, and offered bonds as collateral, would the bank discount it?

A. Yes, sir.

Q. That would have been according to custom?

A. Yes, sir; that would have been as good an endorser as they could have had.

Q. They would take collateral in the place of an endorser, substituted for an endorser?

A. Yes, sir.

504 Q. Did you ever know of a case of a discount of a note at that time on collateral such as merchandise? I can conceive of United States bonds or city of Boston bonds being as good as any endorser. But would banks discount the Atlantic De Laine Company paper upon pledge of their merchandise as collateral?

A. No, sir, or any other merchandise.

Q. You think that a note would have been discounted at that time with bonds as collateral?

A. Yes, sir.

Q. But not with merchandise?

A. No, sir.

Q. But if they had good, respectable bonds in the place of endorser, they would discount the note?

A. Yes, sir; for the reason that they couldn't take the merchandise into their possession, and they could the bonds.

Cross-examination resumed by Mr. Parsons:

Q. Private bankers and individuals have been in the habit, since 1853, of discounting paper, whatever its form, and however many names it might or might not have, on terms agreed upon between the parties for whom the discount was made, have they not?

A. I cannot say in regard to since 1853, but to my certain knowledge they have since 1856.

Mr. PAYNE puts in 5th direct interrogatory addressed to Joseph Lea, (p. 102 of printed record,) and the answer thereto.

Mr. PARSONS. You will put it in subject to objections to its relevancy and competency. I don't object to the testimony, because I expect to put some in myself.

Mr. PAYNE also puts in direct interrogatory No. 6, addressed to same witness, and his answer thereto.

Mr. PAYNE. I now offer Mr. George W. Chapin.

Mr. PARSONS. I object to his testifying at all in the case.

Adjourned to Saturday, May 10th, at 10 o'clock a. m., for the hearing of arguments upon the admissibility of the testimony last offered.

505 MAY 21, 1870.

Direct examination by Mr. Payne:

GEORGE W. CHAPIN recalled:

Q. In your account filed with the master you claim damages for a breach in non performance of the contract for building the mill of Charles T.

James. State any facts within your own knowledge relating to the breach of said contract and to said damages, but not testifying to any statement by, or any transaction with, Charles T. James.

Mr. PARSONS. I object to that question on the general ground, and I also object specially because a claim for damages at the time of this settlement against General James was a transaction with him; and I ask the master to rule upon it.

Mr. HART. I shall rule it in as admissible.

A. At that time it was the custom for de laine manufacturers to buy wool largely at the West when the clip came in. We were obliged to do this because de laine wool wasn't very plenty, and there was a large demand for it. The company, believing that the mill would be completed by the first of August, according to the contract, bought a large quantity of wool. The mill was not completed until some time afterward. Quite a large quantity of the wool was sold, and the company suffered a large loss by the depreciation of wool in the market. The business that fall of de laine manufacturing was one of the most prosperous that had ever been known; all of which the company lost. After that year, and for several years following, the business was quite unprofitable. The loss was a heavy one, and the subject of frequent conversation among the stockholders.

Q. How long after the mill was to have been completed by the terms of the contract before it was ready to go into operation?

(Objected to.)

A. Some little of the machinery went into operation in December, 1851; but it wasn't what would be called fairly in operation, as we expected it would be on the first of August, before February, 1852.

506 Q. In your account filed before the master are certain items of commissions paid by the company to some of its stockholders for indorsements and acceptances. Please state under what circumstances and with what agreements these commissions were charged and paid?

(Objected to on the general ground of the incompetency of the witness on these points.)

A. The company were in that condition that they required considerable funds to carry on their business—a large amount of funds. The proceeds of the goods manufactured by them were insufficient for that purpose; and in order to procure additional funds it was agreed by the stockholders that they should accept or indorse accommodation-paper of the company, with the understanding that if the company were ever able to pay them they should do so. The company subsequently earned money, and said claims were presented to the treasurer, who referred them to a stockholders' meeting, and they were allowed.

Q. In your account filed with the master, there appears certain investments in mills and machinery, made after the settlement with General James. Please state under what circumstances those investments were made, and with what results. State fully and particularly.

(Objected to.)

A. The business of manufacturing de laines subsequent to 1852 was, as I said, unprofitable. In 1853 the company decided it was for their interest to sell the de laine machinery and invest its proceeds in cotton machinery, for the purpose of making cotton goods entirely. This change resulted profitably. Subsequently, during the war, the de laine business again became profitable, and in 1863 and 1864 a new mill was erected for the purpose of manufacturing de laines, returning to the business for which we were originally organized. These investments

have proved as profitable as the general manufacturing business of the country has proved since they were made.

507 Q. During the time when the commissions were charged for indorsements and acceptances, did you have charge of the financial business of the company?

(Objected to.)

A. I did.

Q. Was it practicable or not to discount the paper of the company at market rates without such indorsements or acceptances?

A. It was not, previous to the war.

Mr. PAYNE. Mr. Parsons, I propose to reserve the examination of Mr. Chapin about the claim for extra work in your account until you have completed whatever evidence you have to put in upon that subject.

Q. Did you, prior to the settlement with General James and his assignee, present to Lyman B. Freize, his assignee, a statement of the condition of the Atlantic De Laine Company on the first of January, 1853? If so, will you please produce before the master a copy of that statement, and state upon your oath whether it is or is not a correct statement of the condition of the company at that time?

Mr. PARSONS. I object to that, both on the general ground and on the ground that it is distinctly a transaction with General James within the meaning of the rule; and it was upon the basis of the misrepresentation made in the statement presented to Mr. Frieze that this decree of the judge was founded.

Mr. PAYNE. I offer this testimony—

First. Because I claim that the witness is a general witness, entitled to testify to all matters relevant to the inquiry before the master.

Second. Because, if the witness is limited to testimony relating to facts not being transactions with or statements by General James, I claim that this question, calling for a statement made by the

508 witness to the assignee of General James, is within that limitation, because it is not a transaction with or statement by General James.

Third. Because I claim that the information called for by this question is a part of the dealings "between Charles T. James or Lyman B. Frieze, assignee of Charles T. James, and said Atlantic De Laine Company and George W. Chapin, in his capacity as treasurer or trustee or otherwise;" and I ask that the ruling of the master upon each of these offers may be recorded, in order that I may have the benefit of exception to such ruling before the court.

Mr. PARSONS. I claim, in reply, that the whole subject of the statement made to Mr. Freize, and of the misrepresentations which the court found it contained, has been fully passed upon by the court, and that it is not competent to review the decision of the court in this proceeding. Further, that this is in no sense one of the dealings referred to in the decree.

Adjourned to Monday, May 23, at 3 p. m.

MAY 23, 1870.

Examination of Mr. Chapin continued by Mr. Payne:

Q. You stated the other day, in answer to my question, that it was not practicable to discount the paper of the company without an endorser previous to the war. Have you any explanation to make of that answer? If so, make it.

(Objected to.)

A. My intention was not to limit the time to the beginning of the war, but during the war. I think that until the year 1863 it was necessary on drafts, and subsequently on notes of the company.

Q. Did you ever use the endorsements and acceptances you have spoken of except where it was necessary in order to procure discounts of paper?

509 A. We never did.

Adjourned to Saturday, May 28, at 3 p. m.

JUNE 10, 1870.

WILLIAM J. HARRIS recalled:

Direct examination by Mr. Parsons:

Q. You stated in your former examination that you prepared an account of the cost of the Delaine Mill during the life-time of General James. Have you that account in your possession, and will you produce it and state whether it is the same account prepared by you?

(Mr. Payne objects on the ground that such an account neither proves nor tends to prove anything.

Mr. HART. It seems to me that the objection is fatal to the admissibility of the question.

Mr. Parsons requests the master to take the testimony de bene.

Mr. Hart declines so to do.)

Q. Since your last examination have you examined the account which you have heretofore testified you made for General James?

A. I have.

Q. Have you examined the vouchers which were presented to you before in connection with that account?

A. I have.

Q. Do those vouchers correspond with the items in the account?

(Objected to as having no possible tendency to prove anything. Ruled out. Complainant excepts.)

Q. Did you, at the time you were making up this account, yourself procure any of the vouchers included in the package from the

510 parties, or did you procure any of them to be corrected, or ascertain from the parties whether or not they belonged to the De Laine Mill account?

(Objected to. Ruled out. Complainant excepts.)

Q. What books did you use in making up this account for General James?

A. The ordinary books; day-book, ledger, journal; ordinary books in a business man's office.

Q. Do you know who had kept the books?

A. I think they were in Mr. Lyman B. Frieze's handwriting principally.

Q. Did you, or not, also use the books of Mr. Frieze, assignee, in making up the account of the cost of the De Laine Mill?

A. I am not certain about that. There must have been some of the assignee's accuonts of the cost. I think they were kept on the same books, General James's books.

Q. Did any of the vouchers that you used relate to the completion of the mill by the assignee?

(Objected to.)

A. Yes, sir.

Mr. HART. I think all these questions are to the same point. Having ruled out the first question, all the rest are out as a matter of course.

Q. Do you know of any extra work outside of, and not called for by, the contract which was done by Gen. James, or his assignee, in and about the De Laine Mill?

(Objected to.)

A. I have no further knowledge than what I got through these papers and books.

Q. How long after the De Laine Mill was completed was it that you made up this account?

A. I couldn't say; some two or three years, I should think.

511 Q. Was the mill in operation at the time you made it up?

A. I can't say. It had been, undoubtedly. But whether it was then or not I couldn't say.

Adjourned to June 17, at 3 p. m.

JUNE 27, 1870.

Testimony of George W. Chapin.

By Mr. Payne:

Q. Do you know the terms of the written contract between Charles T. James, Hill, Carpenter & Co., and yourself individually, and as attorney, entered into January 1, 1861?

(Objected to by Mr. Parsons.)

A. I do.

Q. Do you know what was done under said contract?

(Objected to.)

A. I do.

Q. Please state whether the buildings called for by the contract were erected; and if there was any other building erected on the premises, please state what it was, by whom it was erected, and how, and by whom paid for.

(Objected to.)

A. The buildings specified in the contract were erected by James. There were also erected about the same time a large store-house; its frame was wood, with the sides and roof of slate; also a dye-house and a blacksmith's shop. These buildings were erected under the supervision of James C. Bucklin, who was in the employ of James, superintending the erection of the mill. An agreement was made with James and the company that whatever labor and material of his should be used in the construction of these buildings should be taken account of by

512 Mr. Bucklin, and the company would pay James for it. James paid for the stone for the foundation of the store-house and the laying of it; also some carpenter's labor, and some materials, the whole amounting to $1,323.23, which sum was credited to his account December 31, 1851, as by the exhibits. The company paid direct to the parties furnishing it for nine-tenths of the lumber and labor, for all the slating and all the fixtures, amounting to about $4,000. The dye-house belonged to the cassimere department. Its foundations and walls were built by James at a cost of $580.15, which was credited to his account December 31, 1851. The carpenter's work and roofing was paid direct to the parties doing it by the company. The blacksmith's shop was built by Martin A. Snow, by contract with the company, who paid him for it. It was not built till about two months after James's assignment.

Q. Please state whether the machinery called for by said contract in the cotton department of said mill was furnished, and whether any machinery was furnished in said department not called for by said contract.

(Objected to.)

A. The cotton machinery called for by the contract was furnished, but no other.

Q. Please answer the same question as to the woollen department.

(Objected to.)

A. The woollen machinery called for by the contract was furnished, but no other.

Q. Please state whether the steam-engine was furnished according to the terms of the contract; and if not, please explain.

(Objected to.)

A. A steam-engine was furnished, but it was not ready for operation until some time after the time agreed on by James. It was soon found very imperfect in construction, so that the operations of the mill were very often interrupted by its breaking down. Not a week passed but
513 some time was lost. At one time the entire mill was stopped five consecutive weeks while it was being repaired. Some $5,000 was expended on it without avail. Early in 1853 we were obliged to put in a new engine in its place, costing us $9,978.50 above the amount received for the old one.

Q. Please state whether the four sets of woollen machinery called for by said contract were furnished by the Atlantic De Laine Company, and whether the shafting, gas-pipe, &c., were furnished according to contract.

(Objected to.)

A. They were.

Q. Please state whether the shafting, belting, pipes for warming, tools, gas-apparatus, forcing-pumps, fire engine and apparatus, were furnished according to said contract.

(Objected to.)

A. No gas-apparatus was furnished, no force-pumps, and only a few tools. The other articles were furnished. The company put in a force-pump, also some tools, and charged them in James's account.

Q. Please state whether anything was furnished not called for by the contract. If so, what?

(Objected to.)

A. There was nothing but what has been credited to his account.

Q. Please state if there was anything called for by the contract and not furnished.

(Objected to.)

A. I don't know of anything but what I have stated, other than what was bought by the company and charged to his account and appears therein.

Q. Please state when, if at any time, to your knowledge, any
514 claim for extra work and materials under said contract was presented to the Atlantic De Laine Company, and what was the nature and extent of such claim, if any.

(Objected to.)

A. No such claim was ever heard of by me till this bill was filed.

Q. Please state any claims which the Atlantic De Laine Company have against the estate of General James not heretofore mentioned.

(Objected to.)

A. We have a claim for $6,550 and the interest thereon from April

15, 1859, being amount paid William Mason & Co. in settlement of the bond given them by James's assignee and the Atlantic Company to procure certain machinery. We also hold a judgment against him, dated January 22, 1858, for $6,804.16.

Mr PAYNE. That is all.

Further hearing adjourned till Friday, July 1, 1870, at 12 m.

JULY 1, 1870.

George W. Chapin continued:

Cross-examination by Mr. Parsons:

Q. During what period, while James was at work on the mill, were the large store-house, dye-house, and blacksmith's shop built? About what time was it?

A. I should not want to say what month it was, now.

Q. Was it before his assignment?

A. It was begun before his assignment, and finished afterwards. Without reference to the books, I can't give it exactly. Eighteen years ago; I don't like to guess.

Q. Some work, then, was done by General James that was not called for by the contract, was there not, as you have testified?

515 A. There was.

Q. In Exhibit F there are certain charges for sums paid as labor at different times. What labor was that? It is on page 13—the bottom of page 13—and running on the other side. What labor was that, and on what performed?

A. The parties named there were to take charge of the carding, spinning, and weaving rooms, and the labor they and other hands performed was on the machinery in these rooms, in setting it up and adjusting it preparatory to its operating.

Q. You have charged General James in this account with taxes and insurance. Was that part of the contract?

A. That was done because the mill was considered his, and I am quite certain it was done at his request.

Q. Why was no gas-apparatus furnished?

A. On account of an arrangement that was made with the Providence Gas Company to furnish us with gas.

Q. In your account there is an item under date of December 31, 1852, of $3,614.88, for Thurston, Greene & Co.'s bill for labor and materials on engine. Was that labor done and those materials furnished after the mill had gone into operation?

A. The mill was in partial operation at the time.

Q. Can you give the date when the labor was done and the materials furnished?

A. I can hereafter.

Q. In the assignee's account you have charged him with draft on Hacker, Lea & Co. for $2,244 80. Was not this for money borrowed by Frieze of them for debts incurred for mills in Pennsylvania, and not on this mill?

A. My impression is that it was to pay for shafting which had been manufactured for the Atlantic Mill by Bancroft & Sellers, and held back by them on account of not being paid for.

Q. Were the same workmen who were employed by James also employed in building the store-house, dye-house, and blacksmith's shop?

A. They were, so far as the master-workmen and master-carpenters were concerned.

Q. Had the master-carpenters and master-masons, and such as were employed in building those buildings, bills against James also for the work they were doing for him?

A. I suppose they had.

516 Q. On the 21st of June, 1852, you signed an agreement of reference in which the following clause occurs: "Whereas the said James claims that before the date of his said assignment he had, besides performing his own contract, also, at the request of the said parties of the first part, etc., etc., done work and labor, and furnished and provided apparatus for machinery, and prepared materials for them, not specified or required by said contract; and that said Lyman B. Frieze has, since the 2d day of September, 1851, done work, etc., etc., outside of, and not required by, said contract, for which they claim payment;" and you state in your examination now that no claim for extra work and materials was ever heard of by you until the bill was filed, which was in 1859. How do you reconcile the two statements?

A. I will answer that hereafter.

Q. Did you not, as a matter of fact, on the 21st of June, 1852, when you signed the agreement of reference, know that there was an outstanding claim on behalf of James and Frieze for extra work, labor, and materials outside of, and not required by, the contract?

A. I will answer that when I answer the other.

Adjourned.

JULY 8, 1870.

Testimony of William Goddard.

By Mr. Payne:

Q. Are you president of the Providence National Bank?

A. I am, sir.

Q. Have you been a director in that bank, and in its predecessor, the Providence Bank; and, if so, for how long?

A. Since 1850.

Q. From 1852-'3, and on for several years, did that bank discount paper for the Atlantic De Laine Company?

A. The first discount that I find was in July 26, 1852. From that time till within a year or so they have been in the habit of discounting for them, with the exception of a brief period in which I find no entry whatever of discounts.

517 Q. To a considerable amount?

A. In sums varying from $70,000 to $140,000. We carried a line of discount amounting to that sum

Q. During that period of time when these discounts commenced, to '57 or '58, what was the usage of that bank as to requiring endorsers on drafts?

A. The usage there was to require not only an acceptor but an endorser.

Q. According to the rules and usages of that bank during that time, would the paper of the Atlantic De Laine Company have been discounted without any other name—their single-name paper?

A. I think not.

Q. Were you acquainted with the usage of other banks in the city?

A. I should not testify as to that. Only a general impression. There is no rule about these things that is positive. People vary somewhat in their practices.

Cross-examination by Mr. Parsons:

Q. Did you discount anything else for this company besides their drafts on commission-merchants?

WITNESS. At what time?

Q. At any time.

A. I find in September, 1863, that we discounted quite a large amount—$45,000 of notes endorsed by George W. Chapin.

George W. Chapin continued:

By Mr. Parsons:

Q. Will you now answer the questions put at the last hearing?

A. to X Q. 13. I knew that James was to be paid for any materials furnished and labor done upon the dye-house and store-house, as I have stated in my direct examination, and in that sense I knew he had a claim for work and materials not included in the contract, for which we had agreed, and which was credited in his account.

When the agreement of reference was brought to me for signature, if my attention was directed to the language referred to in the question, (and I do not remember whether it was or not,) I should not have
518 hesitated to sign the agreement that the items of the account which we had agreed to pay might be properly audited, but the claim for extra work and materials, as now made, I never heard of till the filing of the bill.

The answer to the 14th cross-question is covered by the answer to the last question.

Q. At the time this agreement of reference was signed, had the Atlantic De Laine Company credited James with the amounts referred to in your previous examination, in their account?

A. They had.

Q. Did the Atlantic De Laine Company comply with the provisions of the manufacturing acts as to making a statement of its liabilities, &c., in the town clerk's office, so as to prevent the individual liability of stockholders for its debts?

(Objected to by Mr. Payne. The proper evidence is the record.)

A. They never did.

WILLIAM S. PATTEN.

Direct examination, by Mr. Payne:

Q. You have been cashier and director of the Manufacturers' National Bank, and of its predecessor the Manufacturers' Bank, of this city, for how many years?

A. Over thirty.

Q. From 1852 on to '57 or '58, what was the custom and usage of that bank in discounting paper as to requiring endorsers on it?

A. The usage was to require indorsers. The old usage was to require two satisfactory names within the State, but after a while the competition of banks, and the standing of business men was such that it seemed to be waived, and that was not so much insisted on. The feeling always was that they insisted upon having it satisfactory. The principal business of banks was discounting drafts for manufacturers and commission houses. They didn't stand upon that rule of requiring two names in the State so much after that, if they were accepted.

Q. During that time, from '52 to '57, or '58, did your bank discount for the Atlantic De Laine Company to any extent?

519 A. I have no doubt of it. There has been no time, that I re-

member, that we didn't discount more or less of that paper. I didn't look to see.

Q. According to the usage and custom of your bank would that paper have been discounted without an endorser?

A. It would not be likely to have been done. We had a high opinion of it, but we should not be likely to discount it without an indorser, unless it was an acceptance.

Q. Do you recollect any instance in which you did discount that paper without an indorser?

A. No, sir, I do not. I doubt if we did.

520 AUGUST 30, 1870.

Testimony of Edwin Hoyt.

Direct examination by Mr. Payne:

Q. What is your age, residence, and occupation?

A. Age, sixty-six; residence, New York; occupation, a commission-merchant.

Q. Are you a stockholder and director in the Atlantic De Laine Company? If yea, how long have you been so?

A. I am, and have been since the organization of the company.

Q. State what arrangement, if any, was made, to your knowledge, at any time, about the payment of commissions by the said Atlantic De Laine Company for endorsements of notes and acceptances, and what was done under the same.

A. The company not having sufficient means to carry on their business required advances beyond goods on hand, which were made from time to time by our accepting the drafts of the company to such amount as they required, and for which the charge usual in such cases was made. It was understood, and was a matter of conversation frequently, that such charges should be paid whenever the company had earned money to enable them to do so. These charges were presented and paid.

Q. State whether, to your knowledge, it is customary for individuals and corporations to pay commissions for endorsements, when necessary in the prosecution of their business?

A. It is.

Q. State whether it was necessary for the Atlantic De Laine Company to have endorsers, and, if so, the reasons why?

A. It was, for the reason that they had not sufficient means to carry on their business without.

Q. State whether the mill erected for the Atlantic De Laine Company by General James was completed within the time prescribed by the contract.

A. It was not.

Q. State whether the company sustained any damage by reason of the non-completion of said mill within the time prescribed by said contract, and, if so, of what nature and to what extent.

521 A. They did sustain a large damage in a large purchase of wool and consequent loss thereon, and in their failure to get their goods to market in time. This loss was frequently talked of and was estimated to be about $50,000. I have read my former deposition upon this subject, and also the testimony of Mr. Chapin given before the master. My former deposition and the testimony of Mr. Chapin agree with my present recollection.

Q. State whether the said company made a claim for damages for the non-performance of said contract. If so, state how soon and to whom.

A. I refer to my former deposition for an answer to this question.

Q. State all facts within your knowledge about any claim of Charles T. James against the Atlantic De Laine Company for extra work, not included in said contract; whether said extra work was done; if so, to what extent, and when, if at any time, the claim for extra work set up in this case came to your knowledge.

A. I have no recollection of any such charge until after the filing of this bill.

Cross-examination by Mr. Parsons:

Q. Was any specification, any detailed claim for damages, or the items constituting the same, ever presented to the assignee, or to General James, to your knowledge?

A. I have no recollection of any formal claim or demand that was made.

Q. Will you examine Exhibit G, page 278 of the original record, purporting to have been signed by George W. Chapin, treasurer of the Atlantic De Laine Company, and by Charles T. James and L. B. Frieze, assignee, and state what knowledge you have of that paper or of its execution?

A. I had forgotten about the paper. It has escaped my mind. Most likely I was cognizant of it at the time. I should think so. But it has escaped my mind.

522 Q. You knew of the fact, did you not, that Frieze obtained an injunction against the sale of the stock by the company under its mortgage, or by Chapin, as trustee under the mortgage, some little time before the settlement?

A. I have some recollection of a temporary injunction, the particulars of which I have forgotten.

Q. In the case of Frieze vs. Chapin, reported 2 R. I., page 430, it appears that this claim for extra work was made by Frieze in his bill in that suit substantially as it is made in the bill in this suit, and is there stated to be somewhere about $55,000. Had you any knowledge that a claim for extra work was then made?

A. I have no recollection. There was a great deal of detail that didn't come before me.

Q. Are Mr. Nehemiah Knight, Mr. William Brenton Greene, and yourself members of the firm of Hoyt, Spragues & Co., and do you and those two gentlemen own a majority of the stock of the Atlantic De Laine Company?

A. I think we do not. I have not the number of shares before me. I won't be positive on that score without referring to the books.

Mr. PAYNE. The books show who the owners are.

Q. It appears from Exhibit R filed before the master that on the 31st of December, 1867, the Atlantic De Laine Company was indebted to Hoyt, Spragues & Co. in the sum of $2,738,275.30; and it also appears from the same exhibit that the stock of goods in the hands of Hoyt, Spragues & Co. 31st December, 1867, was $726,719.40. Was the actual indebtedness from the company to Hoyt, Spragues & Co. the first-named sum less the second?

A. I should have to refer to the books for all this, for more information upon the subject. I will look over the exhibit again, and perhaps I can refresh my memory. I have paid very little attention to these matters. They are in the hands of my book-keepers. I don't care to

change my answer. I should require farther information. My impression is it was the actual indebtedness. But still I won't be any more positive.

523 Q. Was there ever any formal meeting or any vote of the company recognizing the claim for commissions except the meeting of October 10, 1861, which directed that payment?

A. I have no recollection, although there may have been and I not have been present.

Direct resumed:

Q. Hoyt, Spragues & Co. are the selling agents of the Atlantic De Laine Company, are they not?

A. Yes, sir.

Q. At any time how would you get at the actual indebtedness of the Atlantic De Laine Company to Hoyt, Spragues & Co.? Would you deduct from outstanding acceptances goods on hand, or would you wait until the goods were sold before you credited the proceeds in reduction of the indebtedness?

A. We should wait until the goods were sold.

Cross resumed:

Q. Then the item of goods on hand was a subject of credit against the indebtedness—the amount to be ascertained as soon as the goods were sold?

A. Would be credited after they were sold.

Direct resumed:

Q. Suppose on any given day the Atlantic De Laine Company should wish to remove their account from Hoyt, Spragues & Co. to another house; wouldn't they have a right to take away their goods upon paying the outstanding charges?

A. Yes, sir; by our agreeing to it. We frequently make a change in such cases.

Q. Paying expenses and other lawful charges?

A. Paying expenses and other charges.

Q. Then the goods on hand at any time belong to the consignors, subject to your advances and charges, don't they?

A. Yes, sir.

524 *Testimony of Thomas A. Doyle.*

Direct examination by Mr. Payne:

Q. Are you now treasurer of the Atlantic De Laine Company?

A. I am.

Q. You have charge of the books and accounts?

A. I do.

Q. You have been treasurer since when?

A. About the first of February last.

Q. When first did you actually have knowledge that these accounts were wanted?

A. From Mr. Parsons, last Friday, I think.

Q. Now, I will ask you whether or not you can exhibit the books of the company to the master at such time and place as he may direct, and show him the results of the business for the years 1868 and 1869 at any time?

A. I can.

Q. And the indebtedness of the company and their assets?

A. Yes, sir; the books of the company are made up.

Q. And can you within a short time show him upon the books the results of the business up to the first of July? They are not completed yet, if I understand.

A. No, sir. I could show him the principal parts, matters that he would want to know.

Q. And they are being completed as rapidly as possible?

A. There is no unnecessary delay. The thing is being pushed as rapidly as we can. I have been somewhat impatient to have the thing finished; not with any reference to this case, but for my own convenience. I have been pushing matters as rapidly as I could.

Q. You have had read to you this order calling for the results of the business up to the first of January?

A. Yes, sir.

Q. How much of a job, mechanically, is it to make off that account?

A. It is a very heavy job to make the transcript required here from what I have seen here.

525 Q. How much of a job is it, mechanically, to make off the account from the books showing the results of the business for the years 1868 and 1869, the indebtedness of the company, to whom due and what amount to each, giving the net profit or loss, and also a statement of the present debts and liabilities, setting forth the amount due each person, copartnership, or company, and also a statement of the present assets of the company and of what the same consist? How much of a job, mechanically, is it to make off that account?

A. Well, it is a long job. I can't tell you exactly.

Q. But you can show that to the master right off?

A. Right off; will give it to him any time—before night if he wants it. The mere totals I can show, but I cannot give the explanations without a long detailed mass of writing.

Cross-examination by Mr. Parsons:

Q. How long will it take you to put on paper the gain or loss of the company for the years 1868 and 1869?

A. Not very long, sir.

Q. How long will it take you to put on paper the total amount of indebtedness to Hoyt, Spragues & Co. on the 31st of December of each of those years?

A. Not long, sir.

Q. How long will it require to state on paper the total indebtedness of the company on the 31st of December of each of those years?

A. That will not take long, either.

Q. Can the total amount of the bills payable——

A. I can give any of the totals, sir.

Direct resumed:

Q. How long do you think it will take to prepare an account up to the first of January, 1870, in compliance with the order of February 28th?

A. I should think within a week.

526 Mr. Parsons, in view that the accounts of the company down to July 1st are not completed, and returns to the company have not been made so that the same can be prepared in less than one week, waives compliance with the order of March 5, 1870, upon motion X, filed Feb'y 28, 1870, any farther than down to January 1st, 1870.

Mr. Payne gives notice that by not objecting to this waiver, and by

assenting to this order for a week, he does not waive any right for leave to move to file further accounts, or make any other motion.

Adjourned to Sept. 6, 1870, at 3 p. m.

527 *Master's report.—Filed Dec. 10th, 1870.*

IN THE CAUSE IN EQUITY, LUCINDA JAMES, administratrix,
vs.
ATLANTIC DE LAINE COMPANY ET ALS.

To the honorable the circuit court for the Rhode Island district, at the November term, A. D. 1870:

The undersigned, master in chancery of said court, to whom was referred the above-entitled cause by decree of the honorable court entered November 25th, 1867, respectfully reports:

That on the 8th day of February, 1868, in pursuance of notice from the master, the parties appeared before him by their counsel for the purpose of proceeding with the hearing.

That from time to time thereafter, on a great number of days between that day and the day of the final argument on the sixth day of October, 1870, the parties, their several accounts, proofs, allegations, and arguments, were fully heard.

It appears that on the first day of January, 1851, Charles T. James entered into a contract with certain parties to erect certain buildings and to furnish the same with certain machinery suitable for car-
528 rying on the business expressed in the contract, to be completed by the first day of August, 1851, for the sum of two hundred and sixty thousand dollars, the parties thereto having previously entered into an agreement among themselves to procure an act of incorporation under the style of the Atlantic De Laine Company, with a capital of three hundred thousand dollars, in shares of one thousand dollars each. Charles T. James subscribed for one hundred and fifty shares, other parties one hundred and thirty-three shares, leaving seventeen unsubscribed for.

James entered upon the performance of the contract, but on the day of July, 1851, finding himself embarrassed for means to carry on the work under the contract, obtained a loan of seventy-five thousand dollars from the parties interested with him in said Atlantic De Laine Company; and to secure the payment thereof mortgaged his interest in the property of said company and other property belonging to him, to George W. Chapin as trustee for the parties who advanced the money.

On the second day of September, 1851, and before the mill was completed, Charles T. James made an assignment of all his property for the benefit of creditors. The assignment provided that the assignee should proceed and complete the contract, charging the assigned estate with the obligation to complete the same. The assignee proceeded with the execution of the contract, and the mill was completed about the first of March, 1852, certain moneys having been advanced to the assignee by the company to enable him to complete the contract. On the second day of March, 1853, certain instruments of release and settlement were executed by Lyman B. Frieze, assignee, and by the Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, assignee, in and by which, in consideration of the conveyance by said Frieze, assignee, to

the Atlantic De Laine Company of all the right, title, and interest which James at the date of his assignment, or Frieze, assignee, then had in and to the capital stock and property of the corporation, the parties mutually released and discharged all claims on the one part or the other. These releases having been declared void, the case was referred to the master by the following decree:

529 *Decree.—Filed November* 25, 1867.

This cause came on to be heard at this term of the court, and having been fully argued by counsel and considered by the court, it is thereupon ordered, adjudged, and decreed as follows, to wit:

First. That the instruments of release and settlement bearing date March 2d, A. D. 1853, and annexed to the original bill of complaint in this cause, marked respectively C and D, the first-named being executed by Lyman B. Frieze, assignee of Charles T. James, and the second by the Atlantic De Laine Company, by George W. Chapin, treasurer, and by Lyman B. Frieze, assignee of Charles T. James, are void, and are hereby adjudged and decreed to be set aside as having been obtained by fraudulent representations and concealments.

Second. That the said case be referred to Charles Hart, esq., as master in chancery, to take an account of all the dealings between Charles T. James or Lyman B. Frieze, assignee of Charles T. James, and said Atlantic De Laine Company and George W. Chapin, in his capacity as treasurer or trustee, or otherwise, including an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passsd or came into the hands, possession, or control of said Alantic De Laine Company or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of settlement and release, or otherwise; subject, however, to the payment of the debts, if any, due to the creditors of said Charles T. James, as secured by his instrument of assignment; and that said master report to this court the true state of said accounts with all convenient speed.

Third. That all further orders and decrees in this case be reserved till the coming in of the report of said master.

Entered as the decree of this court, per order thereof, this twenty-fifth day of November, 1867.

HENRY PITMAN, *Clerk.*

530 On the 8th of February, 1868, the complainant filed her motion A. The respondents objected to the entry of the order moved for in said motion A, but consented to submit to an order upon them to file an account in accordance with the terms of the decree. The complainant thereupon asked the master to make such an order, not waiving, however, her right to call up said motion A after the filing of respondents' account. Such order was made accordingly.

Thereupon the respondents filed the three accounts respectively marked "F," "G," and "H."

F, "an account of all the dealings between Charles T. James and the Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer, trustee, or otherwise," showing state of contract-account March 2d, 1853, and balance on mortgage-account at that date.

G, "an account of all the dealings between Lyman B. Frieze, assignee of Charles T. James, and the Atlantic De Laine Company, and George W. Chapin, in his capacity as treasurer, trustee, or otherwise," showing state of account March 2d, 1853, in completion of original contract of

Charles T. James as provided in assignment, and also containing a statement of the condition of the Atlantic De Laine Company rendered to Frieze at his request during their dealings, and containing also a claim on the part of said Atlantic De Laine Company for $50,000 for nonfulfillment of the contract by Charles T. James.

H, "an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, and which passed or came into the hands of said Atlantic De Laine Company, or George W. Chapin as treasurer, trustee, or otherwise," with amounts realized therefrom excepting 113 shares of stock of Atlantic De Laine Company, mortgaged and not disposed of.

These accounts thus filed by respondents were objected to by complainant as incomplete, imperfect, and insufficient, and not in accordance with the decree, and she renewed her motion marked "A," the complainant insisting that the said accounts F, G, and H, are defective, and not in accordance with the decree, in that they do not state the
531 nature and value of the property of the corporation, when the same was purchased, and for what price, nor the amount of goods manufactured, the price for which the same was sold, and the profits made by said sales from the date of the releases and settlements of March 2d, 1853, to the date of the decree.

The respondents, on the other hand, claiming and insisting that the accounts already filed were in compliance with the decree of the court, for various reasons not necessary here to enumerate, drawn from the nature of the original bill and the relief therein sought, and from the language of the decree itself; and also insisting that the said accounts were a compliance with complainant's motion A, except the interest-account, which is a mere matter of computation. That the corporation had never declared any dividends, and had no surplus from which to make dividends, and that the shares claimed by said James were entitled to their aliquot share or proportion of whatever the property of the corporation might be after payment of the debts of the company and any claims of the company upon said shares.

The master, with some doubt at the time, sustained the objections of complainant to the accounts F, G, and H, as not being in compliance with motion A, and ruled that the accounts called for by said motion A, in regard to the shares of stock subscribed for by said James in said Atlantic De Laine Company, the value thereof, the income-dividends declared or otherwise, profits or increase in value thereof from year to year, from July, 1851, to the date of the decree, were properly called for by the terms of the decree.

In compliance, therefore, with the order of the master, the respondents submitted the account marked "L," and in connection therewith and preliminary thereto what was termed a "state of facts." This account contains a statement of the condition of the company on the first day of January, 1853, assets and liabilities, a statement of the gains and losses in each and every year from 1852 to 1867, inclusive, and a statement of the assets and liabilities of the company on the 1st day of January, 1868.

Some objection was made by complainant to the reception of
532 this account, marked "L," by the master as a compliance with his order, not on account of any alleged defects or deficiencies in the accounts themselves, but on account of the "state of facts" prefixed thereto, and the matters and statements therein.

But not waiving any rights, the complainant called for the books of the corporation to be produced before the master, and the same were

produced. A competent accountant and book-keeper, agreed upon by both parties, was selected to examine the books of the company and to compare and verify the accounts F, G, H, and L, and to make such detailed accounts or series of accounts therefrom as should constitute in the fullest sense a response to said motion A. This was accordingly done. From time to time, transcripts of the various accounts on the books, as were desired by the complainant, were produced by the book-keeper before the master, and he, from time to time, examined touching the same. The whole business condition and management of the corporation during the years from 1852 to 1867, inclusive, being thus substantially placed before the master, the accounts F, G, H, and L were found to be in accordance with the books. Subsequently accounts showing gains or losses in years 1868 and 1869, and statement of assets and liabilities on the 31st day of December, 1869, were filed by respondents, it being agreed that the master should state the accounts between the parties down to the 1st day of January, 1870.

When, therefore, the evidence and accounting before the master had closed, he had before him the contract-account for building the mill between the company and Charles T. James, and his assignee, Lyman B. Frieze, and the state of the mortgage-account between Charles T. James and the company stated as there was no difficulty in so stating it in the form of debtor and creditor, as required by the rule 79, and, in addition thereto, as has been seen, a mass of accounts and exhibits showing the property and business of the corporation and the management thereof from 1852 to 1869, inclusive.

At the final argument before the master it was again urged by the counsel for respondents that an account of the value, income, dividends, profits, and increase of the stock in the Atlantic De Laine Company
533 originally subscribed for, owned, and held by Charles T. James, was not called for by the decree, and that the master should confine himself to stating the contract and mortgage account and the balance one way or the other thereon. If a balance found due to said James, to be paid to him by the company, with a transfer to James of such number of shares as he should be found to be entitled to. If a balance found due from James, upon payment by him, to take his stock, with all the rights and subject to such burdens as might thereafter be determined in any settlement or accounting between James, as a stockholder, and the company.

After attentively considering the arguments of counsel, re-examining the original bill, and the language of the decree, and having given the subject much reflection, the master is satisfied that he erred in his original ruling, and that the interpretation put upon this decree by counsel for the respondents is the correct one.

The bill in which this accounting was called for was filed by Charles T. James against the Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, assignee of James, to set aside the instruments of release and settlement executed by Frieze, assignee, and based on the release of the equity of redemption of the stock by Frieze to the company, as having been obtained by fraud, and to have the Atlantic De Laine Company declared to hold the stock as trustee of said James, and that an account might be taken of all the dealings between Charles T. James and the defendant corporation, and the defendant George W. Chapin, in his capacity as treasurer of said corporation under said contract and otherwise, and that the said James may be declared entitled to a transfer of his stock upon the payment of such sum as may be found due to said corporation.

The dealings of Charles T. James, or his assignee, Frieze, with the corporation, through its treasurer, Chapin, and with Chapin, trustee for the parties who loaned James seventy-five thousand dollars, were dealings under the contract and under the mortgage.

It is urged by the respondents that George W. Chapin is the mortgagee and not the company; that he cannot be called to account
534 for dividends except such as may have been paid to him, or at least declared in favor of the stock held by him as mortgagee. But it seems to the master that the interposition of Chapin, and the cestuis que trustent, was formal merely. Though made to Chapin, trustee for certain parties named, they were the parties constituting the company. James' request for the loan was made to the corporation through its treasurer. James was in haste. There was not time to give the required notice for a corporation meeting. The stockholders were informally called together. The loan was made in the proportion in which they held stock, excepting Harrison & Co., who were financially in trouble, and Day, Owen & Co., who were not notified, owning only three shares. At the time of the settlement, Frieze, assignee, transferred 113 shares to Chapin and the company. They stood on the books "Atlantic De Laine Company special stock and mortgage account, 113 shares."

Dealings under the mortgages were, therefore, as much dealings with the company, as the dealings with Chapin, treasurer under the contract.

The bill prays an account of the dealings with the company and with the said defendant Chapin, in his capacity as treasurer or trustee under said contract, and otherwise, viz, and under the mortgage.

But what are the dealings under the mortgage within the meaning of the decree in this bill?

The master is unable to perceive how the management or mismanagement of the business and affairs of the corporation can in any sense be termed dealings with Charles T. James under the decree in this bill. The decree declares void the instruments of release and settlement, and leaves the parties precisely as if no release had been executed.

The corporation, instead of having an absolute title to James' stock, are mortgagees holding the same as security for any balance of indebtedness under the same, and as security for any other indebtedness on the part of James to the company by virtue of the charter.

Any portion of the mortgaged property having been lawfully sold under the mortgages, the company must account for the proceeds
535 in reduction of the debt. That which is not sold to be transferred to the mortgagor upon payment of his indebtedness.

Certain shares are mortgaged by James to the company, but no dividends have ever been made by the company, consequently none have ever been received on these mortgaged shares. When the debt for which the shares were pledged as security is paid, the mortgagor will take them back, with all the rights appertaining thereto. Whether there has been fraud or negligence, or mismanagement in the conduct of the affairs of the corporation, is not for the master but for the court to say, upon the proper bill, in which all parties can be heard.

But it is urged that, beside taking an account of the dealings between the parties as aforesaid, the master is directed to take "an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of settlement and release or otherwise."

But by this, the master submits, is intended an account of what property o wned by James passed, &c., and which property he asks, and is to have, restored to him upon the settlement of his accounts with the defendant corporation.

To state those accounts under the contract and mortgage, and establish and determine the balance one way or the other, is the duty of the master.

That balance is in no way affected by the value of any portion of the mortgaged property remaining in the hands of the corporation.

When the master has ascertained and reported the true balance of the account, if confirmed, and the court see fit, they can order upon its payment a conveyance of the property pursuant to the prayer of the bill.

For the master to carry forward any amounts in debit or credit to vary the state of that account, extracted or made up in any mode from the accounts produced, showing the management, results, and condition of the corporate affairs from 1852 to the present time, is manifestly
536 impossible, except by undertaking to adjudicate upon the various questions raised as between Charles T. James as a stockholder and the Atlantic De Laine Company, and arising out of the management of the business and property of the company, and to settle and determine their respective rights and equities therein.

This is clearly not the province of the master. In the appropriate proceeding by the administratrix, when the stock is returned to her, these matters can be settled by the court.

Nor does the master understand that the counsel for complainant, in their final argument before the master, ask that this should be done; but now claim only that certain matters touching transactions, gains, investments, business, and condition of the company, should be stated and reported to the court, that they may make such final decree in the premises as to them shall seem fit.

The master will proceed, therefore, and state the account, and all the accounts which, as now seems to him, is called for by the decree down to January 1st, 1870.

But inasmuch as the final conclusion of the master may be deemed erroneous by the court, and in order to avoid, if possible, any further reference, the master will state the results of the various accounts and exhibits touching the management of the corporation affairs.

This is of course superfluous under the master's present interpretation of the decree. But as there is no dispute as to the figures of these accounts and exhibits, only a controversy as to the use that should be made of them by the master, there seems to be no impropriety in submitting them to the court.

In the account D, filed by the complainant in response to the call of respondents, the complainant charges the respondents with the contract-price of the mill, and an item for work and materials furnished outside of the contract. She then credits respondents with amounts paid by the company under the contract, with the balance due Chapin, trustee, under the mortgage-account, and with amount due from assignee, Frieze, and striking a balance finds a certain amount due Charles T. James.

She then proceeds to debit the company with 150 shares of stock
537 at par value, $150,000, and also with certain other items, against which amounts are not carried out, among them being dividends on stock and increased value from 1851 to 1857.

The master observes, in passing, that supposing the balance above re-

ferred to was a correct one, if Charles T. James proposed to take 150 shares of stock, he should be charged with $150,000, not credited. In other words, he must pay for it like any other subscriber. But the master refers to the account D more particularly now, for the purpose of discovering what items there are about which there is no dispute. The subject-matter of the items, with the exception of the items of capital stock, dividends on same, and increased value, it is agreed are proper items in the accounting under this decree.

It was agreed at the argument that the item of credit for amount paid James under the contract should be $231,000, instead of $113,000, as stated in the account D.

There are, then, two items about which there is no dispute, viz, the contract-price of the mill, $260,000, and the amount paid by the company to James under the contract at the time of his assignment, $231,000.

Crediting Charles T. James with the contract-price of the mill, and also for any work and materials furnished outside of the contract, and debiting him with all amounts paid by the company under the contract, or for labor or materials paid for by the company that should have been paid for by James, also with advances to assignee to complete contract, the balance under the mortgage, and any other proper charge found by the master, bringing the same down to January 1st, 1870, with the appropriate interest, and the balance may be struck as called for by the decree, upon the settlement of which the court can make such decree touching the stock in compliance with the prayer in the bill as to them shall seem just and proper.

EXTRA WORK AND MATERIALS.

In the account D, filed by the complainant May 5th, 1858, there is the charge for extra work and materials furnished outside of contract, $79,973.56.

538 In response to the call of respondents for the items of this charge, the complainant files, December 2d, 1868, Exhibit W, accompanying which is a paper marked No. 1, headed "statement vouchers of building account De Laine mill;" total of all the items being $183,142.15. What portion of the items in this last paper made up the amount of $79,937.56 in Exhibit D does not appear, and no effort is made to show. No attempt is made by complainant to establish any part of it by proof of the items.

The complainant herself does not pretend to any personal knowledge touching the same. The exhibits were received from her counsel, made up, as she understands, from papers in their possession derived from her husband. And she, believing from information from her husband and counsel that they were correct, made oath to them, according to the best of her knowledge and belief. (See testimony of Lucinda James.)

William J. Harris is examined touching an account prepared by him ten or fifteen years before, at request of James, from papers in his office, to show cost of the mill. The account is lost. He thinks the amount of that account was about $386,000. If the account were before the master, made up in the mode as testified by Harris, it would be a very uncertain guide as to the cost of the mill without further proof and verification of the items. But it is quite evident that the cost of the mill to James proves nothing as to extra work and material. James may have made an unfortunate contract for himself.

It is evident from the agreement of reference of June 21st, 1852,

(original record, Exhibit G, p. 278,) that James claimed that he had at the date of assignment done work and furnished materials outside of the contract, and the assignee made the same claim by his bill filed in State court. (2 R. I., 430.)

But they do not prove that the company admitted the claims. Building contracts are notoriously fruitful in controversies of that description.

The mere filing by the complainant of a paper containing statement of vouchers of building account of de laine mill, with no light as to whether the items are within or without the contract, gives no aid to the master.

The master can presume nothing in favor of the complainant.

539 He finds nothing in the evidence which would warrant him in reporting the claim as proved, or any portion thereof, for no attempt is made to establish any items. It would be very dangerous for the master to act upon such kind of testimony as the complainant offers. It would be guessing, and not adjudicating.

Moreover, the respondents, in response to the call of complainant, file the account F under oath, in which they give James credit for certain work and materials furnished outside of the contract, and the treasurer, Chapin, testifies that nothing more was furnished.

The claim for extra work and materials is therefore rejected.

The Atlantic De Laine Company made claim for damages for the non-fulfillment of the contract within the time specified, arising, as alleged, from loss on wool purchased in the spring of 1851, in the expectation that the mill would be completed by the first of August, 1851; that, owing to the failure on the part of James so to complete it, the company were obliged to sell much of the wool at prices below cost, and also lost profits which would have accrued to the company from the production of de laines in the autumn of 1851.

No detailed statement in figures of this damage to the company was presented to the master. The damage was estimated by the witnesses, Josiah Chapin, Edwin Hoyt, and George W. Chapin, at not less than fifty thousand dollars.

Conceding that the matter of such damage was one proper to be considered in stating this account, which seems more than doubtful, yet nevertheless the evidence in regard to it, resting merely on estimates, is too vague for the master to act upon.

After the hearing and accounting was fully closed upon both sides, and on the day appointed for the arguments of counsel, the respondents offered further evidence touching said damage. The complainant objected to a re-opening of the hearing, which objection, under all the circumstances, the master felt obliged to sustain.

This claim of the respondents is therefore also rejected.

The Atlantic De Laine Company held a judgment against James, obtained upon a note for five thousand dollars, originally made by

540 James, payable to the order of L. B. Frieze, and its payment guaranteed by the Globe Printing Company and Hill, Carpenter & Co. It is alleged, and not controverted, that the note was made to enable James to raise money to pay for labor at De Laine Mill; that the same was preferred in the assignment of James, but was never paid by the assignee; that the same was paid by the guarantors, and held and owned by them at the time of the execution of the instruments of release and settlement. After the settlement the note was purchased by the De Laine Company, they paying full value therefor, and judgment subsequently obtained thereon.

This is not a loan made by the company to James. It is true the guarantors were stockholders in the company. But for aught that appears, it was an independent transaction, of which there might have been many such made by James in the course of his performance of the contract.

The guarantors, by the failure of James, were obliged to take up the paper, and thereby became creditors of James. The company purchased the claim of the guarantors, and they might have purchased many others. But claims against James, acquired by the company in this mode, are clearly not dealings between James and the respondents within the meaning of this decree. It is rejected.

In order to aid the assignee, Frieze, in obtaining the balance of certain machinery due from William Mason & Co., of Taunton, contracted for by James, the company were obliged to join Frieze in a bond to furnish certain stock or their value. Frieze was unable to furnish the stock; and the company, in order to be released from the bond, were obliged to pay Mason & Co. $6,550. This sum, with interest to January 1st, 1870, from the date of the payment, to wit, April 18th, 1859, should be credited to the company in this accounting, viz, $10,756.19.

CONTRACT-ACCOUNT.

In the accounts F, G, and H, filed by respondents, interest was computed only to March 2d, 1853. In the account F, contract-account between James and the company, interest was computed from the
541 date of payment on all the items, including the six monthly installments paid to James at the time specified in the contract. This, so far as said six installments are considered, the master considers erroneous. They were the sums due and payable under the contract. Interest manifestly should not run upon these against James until from and after the date at which the contract-price of the mill should be credited to James, and interest commence on that.

This should be at the date of the completion of the contract. Moneys advanced by the company on the final installment before due, and payment made by the company for work and materials which should have been furnished by James, should bear interest from the date of such advances or payments.

At the time of the settlement between the company and Frieze, in 1853, it was agreed that the date on which his bill for mill should be credited to his contract-account should be February 1st, 1852.

Interest is now credited by the company to James on credit side of said account F, on the item of contract-price of mill, from February 1st, 1852. This certainly is as early date as, from the evidence, said contract could be said to have been fully completed. This seems, therefore, a proper time to credit it.

Computing, therefore, interest on the several items on debit and credit side of said contract-account F, with the exception of six installments and contract-price, from the several dates thereof to January 1st, 1870, and upon said installments and contract-price from February 1st, 1852, to January 1st, 1870, and we find the accounts to stand thus:

Debit side	$546,065 55
Credit side	522,350 41
Balance in favor of James	$23,715 14

ASSIGNEE'S ACCOUNT.

Exhibit G is a statement of items of account with the assignee, Frieze, showing advances and payments made by the company to enable
542 him to complete the contract. The correctness of the items is not controverted. The complainant, it is true, in her account D, only credits the De Laine Company with $24,500 as items of account of De Laine Company against Frieze belonging to estate of Charles T. James to pay. But in the Exhibit GG, filed by complainant, she states that said amount was arrived at by deducting from the assignee's account, as claimed by the company, $29,000, alleged to be due under the contract, viz, difference between $260,000 and $231,000. But this ignores all the items charged to James in Exhibit F for labor and materials furnished which should have been paid for by James; no evidence having been offered, however, by the complainant to impeach the correctness of the same.

Computing, as above, the interest on the account of the company against Frieze, assignee, to January 1st, 1870, and the account stands L. B. Frieze, assignee, Dr., $104,752.74.

In the accounts filed by respondents the balance due James under contract-account is carried forward to credit of assignee's account, reducing same by that amount. They may as well stand separately.

MORTGAGE ACCOUNT.

No dispute is made before the master as to the correctness of the items of the mortgage account as the same appear in Exhibit F. With interest stated to January 1st, 1870, the balance due under the mortgages is $86,114.17.

Account January 1st, 1870, of all the dealings between Charles T. James or Lyman B. Frieze, assignee of Charles T. James, and Atlantic De Laine Company and George W. Chapin, in his capacity as treasurer or trustee, or otherwise:

RECAPITULATION.

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratix, January 1st, 1870:

DR.

For balance due under contract-account	$23,715 14

543 CR.

By amount of account Atlantic De Laine Company against L. B. Frieze, assignee, belonging to estate C. T. James to pay	$104,752 74	
By balance due under mortgage account	86,114 17	
By amount paid William Mason & Co. in settlement of bond	10,775 10	
Balance due Atlantic De Laine Company January 1, 1870		$177,906 87

Charles T. James subscribed for 150 shares of stock of the company, and had paid for, at date of mortgage August 1st, 1851, in the manner hereinbefore stated, 113 shares. What right the complainant may have

to take the remaining shares is not for the master to say. It does not appear how his subscription was to be paid, in cash or in work and materials. Nor is it at all material which. It was to be paid for in some way.

At the date of the mortgage James had received $231,000 from the company. Upwards of $20,000 was subsequently paid by the company for bills of work and labor that should have been paid by James. James made an assignment September, 1852, and the company subsequently advanced to the amount of $53,840.26 to enable the assignee to complete the contract. The master does not perceive how James can be said to have paid for more than 113 shares at date of mortgage.

The mill was completed. The accounts are now stated as of January 1st, 1870. If correctly stated, it is manifest that the above balance of $177,906.87 found against the estate would have to be swelled by the additional subscription price of 37 shares, with interest, if the estate is entitled to them.

Account of assigned and mortgaged property originally held by James, and which came into the hands of said company, or George W. Chapin, as treasurer, trustee, or otherwise:

Homestead in the city of Providence.....
Warwick farm.....
Scituate farm.....
Note of Cannelton Company—amount $50,000.....
1,000 shares East Tennessee Mining and Manfg. Co.....
113 shares stock Atlantic De Laine Co.....

544 Amount realized from the homestead, Warwick farm, notes of Cannelton Company, credited as above in mortgage account:

The master herewith reports statement of results of business of Atlantic De Laine Company down to January 1st, 1870, condition of company at different periods, assets and liabilities, gains or losses in different years, investments, claims against the company and mode of payment, assessments, capital stock paid in, stockholders at different periods, meetings of directors and stockholders at different periods, and action thereat as shown by the various accounts and exhibits filed by the respondents, or produced by the accountant and book-keeper appointed in the case as aforesaid.

Charles T. James subscribed for 150 shares of the capital stock of the company.

At the date of his assignment he had received from the company $231,000, viz: the first six installments under the contract, $36,000 each, and a further advance of $15,000 of the final payment of $44,000 not then due.

James had applied, of the first six installments, to the payment of his subscription, the sum of $113,000. No certificates had then been issued to the stockholders. The stock was not all subscribed for and the mill was not completed.

Whole number of shares originally subscribed for.....	283
Charles T. James.....	150
Hill, Carpenter & Co.....	30
Hoyt, Tillinghast & Co.....	25
Hacker, Lea & Co.....	25

Globe Printing Company	25
Dodge, Tucker & Co	15
Day, Owen & Co	3
Harrison & Co	10

One share was purchased of the company in 1852 by N. P. Bartlett.

545 Capital stock paid in January 1st, 1853:

Hill, Carpenter & Co	$30,000 00
Hoyt, Tillinghast & Co	25,000 00
Hacker, Lea & Co	25,000 00
Globe Printing Company	25,000 00
Charles T. James	113,000 00
Dodge, Tucker & Co	15,000 00
Day, Owen & Co	3,000 00
N. P. Bartlett	1,000 00
Harrison & Co., on account of their subscription	495 53
	$237,495 53

Condition of Atlantic De Laine Company January 1st, 1853:

DEBIT.

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CREDIT.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract-account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

The value of the stock January 1st, 1853, may perhaps be deduced from above.

546 Condition of Atlantic De Laine Company March 1st, 1853:

DEBTOR.

Bills payable	$434,260 61
Due Hoyt, Tillinghast & Co. for advances	63,398 02
Due Hacker, Lea & Co. for advances	38,796 37
Due Dodge, Tucker & Co	32,767 41
Due Hill, Carpenter & Co	24,758 69

Due Day, Owen & Co	1,564 39
Due George W. Chapin, trustee	8,524 30
Due Globe Printing Company on account	888 12
Due S. C. Blodgett	50 00
Stock-account	237,495 33
	$842,503 44

CREDITOR.

Cash	$24,204 73
Interest	8,479 78
Albert Dailey	1,900 00
Stock at mill and amount paid for labor and supplies since January 1st, 1853	28,229 39
L. B. Frieze, assignee	53,314 77
Cotton at mill, January 1st, and sent to mill	11,923 67
Construction-account	40,795 33
Cassimeres in agents' hands and stock in process at mill	9,038 97
De laines in agents' hands and stock in process at mill	170,208 64
Wool at mill, January 1st, 1853, and purchased since	150,210 76
Contract-account Charles T. James	260,240 64
Real estate	13,140 60
George W. Chapin	326 37
Providence Steam and Gas Pipe Company	162 38
For account of loss	70,327 41
	$842,503 44

The value of the stock March 1st, 1853, may perhaps be deduced from above.

547 Results of business of company for years 1852 to 1869 inclusive :

Losses.		Gains.	
Loss to Dec. 31st, 1852	$65,551 92		
" in 1853	11,305 61		
" " 1854	3,930 05		
		Gain....1855....	$29,983 50
		" ....1856....	42,026 01
		" ....1857....	4,193 67
		" ....1858....	42,816 65
		" ....1859....	106,590 95
		" ....1860....	98,318 04
		" ....1861....	108,180 30
		" ....1862....	360,827 92
		" ....1863....	320,738 09
		" ....1864....	111,444 13
Loss.....in 1865	846 92		
" " 1866	288,191 94		
" " 1867	124,479 52		
		Gain....1868....	273,129 21
" " 1869	199,048 45		
Aggregate losses	$693,354 41	Aggregate gains.	$1,498,248 47

No dividends were declared by the company unless the court should decree certain payments made to certain stockholders as commissions

for endorsing and accepting company paper hereinafter referred to, to be dividends.

The costs to the company, up to 1858, of the first mill, machinery and buildings connected therewith, was...	$491,281	91
Of this amount there was charged off in 1858 and 1859 to profit and loss.....	$191,281	91
Thus reducing cost on the books to.....	$300,000	00
In addition to the cost of first mill, machinery and buildings, there was expended by the company, down to January 1st, 1868.....	$1,474,522	50
Construction-account, as per book January 1st, 1868....	$1,774,522	50

548 Condition of the company December 31st, 1869:

ASSETS.

Construction-account.....	$2,054,424	07
Goods in agents' hands.....	877,947	63
Wool at mill.....	523,817	99
Goods at mill.....	289,108	83
De laines at A. & W. Spragues'.....	593,598	26
Cotton and wool stock in process and wool-waste.....	207,462	20
Supplies at mill.....	141,945	25
Cotton at mill.....	58,221	97
Bills receivable.....	146,726	53
Cash.....	65,962	49
Riverside Mills.....	40,455	30
Stock in Providence and New York S. S. Co.....	6,912	00
Due from sundry persons on account.....	56,150	02
	$5,062,832	54

LIABILITIES.

Due Hoyt, Sprague & Co.....	$4,026,374	36
" bills payable.....	74,402	22
" Dabney, Morgan & Co.....	162,060	00
" United States.....	29,240	51
" Sundry persons on account.....	82,193	83
	$4,384,270	92

By this it appears that the construction-account has grown to $2,054,524.07. From which we infer that still other expenditures have been made in real estate, mills, or machinery.

Various exhibits were filed with the master showing liability of the company to Hoyt, Sprague & Co.; list of bills payable; bills receivable; goods, stock, material and supplies on hand at different periods between 1852 and 1870, which the master does not deem necessary to incorporate in this report, as the totals appear in the accounts herein contained, showing final results of business and condition of the company at the periods therein named.

549 The respondents, in their account L, state that, "at the time of the execution of said instruments of release and settlement, the company had no capital or credit wherewith to conduct its business,

and was compelled to resort to the credit of its stockholders, and that it was accordingly understood and agreed that the stockholders should from time to time accept and endorse the drafts and other commercial paper of the company, and, in case the business of the company should be successful, that the company should compensate such stockholders for such acceptances and endorsements, and under this understanding and agreement, and by means of such endorsements and acceptances, the business of the company was conducted.

The following claims, with interest to June 30, 1861, were presented to the treasurer, reported correct, as appeared by the books of the company, and directed to be paid at a special meeting of the company held October 10th, 1861, the parties agreeing to take the stock of the company at its par value:

CLAIMS.

Hoyt & Tillinghast for	$3,434 06
Hoyt, Tillinghast & Co. for	59,766 75
Hoyt, Sprague & Co. for	26,484 10
Globe Printing Company for	16,367 27
George W. Chapin for	68,604 64
A. Tucker, jr., and Lewis Mills, surviving partners of the late firm of Dodge, Tucker & Co., for	7,168 57
Tucker, Newton & Mills for	10,796 34
Tucker, Newton & Co. for	25,721 53
Josiah Chapin for	10,866 15
Total	$229,209 41
Commissions	184,695 89
Interest on same to June 30th, 1861	44,513 52
Total claims	$229,209 41
Interest on portion settled by company's notes	2,162 24
	$231,371 65

550 Settled as follows:

By 186 shares of the stock of the company at its par value ($1,000)	$186,000 00
Notes of the company	45,579 56
	$231,579 56
Less this amount abated of the claim of one of the parties for error	207 91
Total	$231,371 65

The one hundred and eighty-six shares thus distributed were composed of shares which had never been issued and shares transferred to the company by different parties.

On the 5th day of October, 1855, an assessment was made upon the shares of the capital stock held by Hoyt, Tillinghast & Co., Hacker, Lea & Co., Hill, Carpenter & Co., Globe Printing Company, and Dodge, Tucker & Co., being all the stockholders at that date, except the company itself, of five hundred and twenty dollars on each share, which

assessment was paid by all the stockholders, except Hill, Carpenter & Co.

The precise number of shares held by these parties at this particular date does not appear.

No certificates of stock were issued until January, 1854, then issued as follows:

Hoyt, Tillinghast & Co	25	shares.
Hacker, Lea & Co	25	"
Globe Printing Co	25	"
Hill, Carpenter & Co	30	"
Dodge, Tucker & Co	15	"
Day, Owen & Co	3	"
Atlantic De Laine Co., special stock and mortgage account	113	"

The history of the stock originally subscribed for, the various transfers by parties at different times, the mode in which the company be-
551 came possessed of the one hundred and eighty-six shares distributed as above in payment of commissions, are fully detailed in the testimony of George W. Chapin.

The stock stood December 31st, 1867, as follows:

George W. Chapin	102	shares.
Edwin Hoyt	87	"
William B. Greene	30	"
Nehemiah Knight	34	"
William C. Chapin	23	"
A. Tucker	12	"
Josiah Chapin	12	"
Total	300	shares.

On the 4th of September, A. D. 1868, a meeting of the directors of the Atlantic De Laine Company was held, at which the investment of the earnings and other funds of the company in certain additions to the property of the company and the division and distribution of certain shares of the capital stock of the company purchased in December, 1862, of A. Tucker, jr., and W. C. Chapin among the stockholders in June, 1864, were by the vote of the directors approved, ratified, and confirmed.

On the same day a meeting of stockholders was held, at which the same vote was passed.

The date of the meeting of the directors next before September 4th, 1868, was May 6th, 1853.

The date of the meeting of stockholders next before September 4th, 1868, was October 10th, 1861, hereinbefore referred to.

Respectfully submitted.

CHAS. HART, *Master.*

552 On the 29th day of October, the master submitted to the counsel in this cause a draft of his foregoing report. On the 16th of November following the complainant filed objections, and on the 29th of November the respondents filed their objections to the draft, together with references to the evidence and exhibits in support of the objections.

After considering the same, the master did not see any reason to alter or modify the draft, and the several objections were therefore overruled.

On the 29th of June, 1870, it appearing that the accounts of the Atlantic De Laine Company were made up on the first of January and July of each year, and that the accounts for July 1st, 1870, could not be made up for some considerable time, the complainant waived compliance with motion X, filed February 28th, 1870, any further than down to January 1st, 1870.

The case was set down for argument before the master for September 15th; on that day adjourned by consent to the 27th of September; on the 27th it was further adjourned to October 6th on motion of respondents, they stipulating to waive ten days of the month allowed by rule within which to file exceptions in the clerk's office.

The objections to the draft report are hereunto annexed, respectively marked complainant's "LL" and respondents' "MM."

The evidence and exhibits referred to in connection therewith are also herewith reported.

C. HART, *Master.*

553 [LL.]

LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET AL.

Complainant's objections to master's draft report.

The complainant objects to the draft report of the master as follows:

First. Because the master hath reported that he erred in his original ruling that the account called for by the complainant in regard to the shares of stock subscribed for by Charles T. James in the defendant corporation, the value thereof, the income, dividends, profits or increase in value thereof from year to year, from July, 1851, to the date of the decree, were properly called for by the decree.

Evidence referred to: Exhibits A, B, I, J, K.

Second. Because the master hath reported and decided that the interpretation put upon the decree by the respondents that the accounts rendered by them (referred to in his said draft report as Exhibits F, G, and H) under the contract and with the assignee and under the mortgage, down to the date of the instruments of release and settlement, which, by the terms of the decree are declared to be void and to be set aside as having been obtained by fraudulent representations and concealments, with interest computed thereon, were a compliance with the motion of the complainant and in accordance with the decree, was the correct interpretation of the decree.

554 Third. Because the master hath reported and decided that an account of the value, income, dividends, profits, and increase or value of the stock of the defendant corporation originally subscribed for, owned and held by Charles T. James, was not called for by the decree, and hath confined himself to stating the contract and mortgage account and the balance thereon.

Fourth. Because the master hath reported and decided that it is his duty only to state the accounts under the contract and mortgage, and establish and determine the balance one way or the other.

Fifth. Because the master hath reported and decided that, by the language of the decree which directed him to "take an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the

hands, possession or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, only is intended an account of what property owned by James passed," &c.

Sixth. Because the master, while declaring that, by an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, is intended an account of "what property passed," &c., hath not ascertained nor hath he reported what property passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise.

Seventh. Because the master hath reported that one hundred and thirteen was the number of shares of the capital stock of the Atlantic
555 De Laine Company originally held by Charles T. James, and by him assigned and mortgaged, passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise.

Evidence referred to: Bill and answer, Exhibit S, Exhibit HH, testimony of G. W. Chapin.

Eighth. Because the master hath not reported that one hundred and fifty shares of the capital stock of the Atlantic De Laine Company originally held by Charles T. James, and by him assigned and mortgaged, passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise.

Evidence referred to: Bill and answer, Exhibit S, Exhibit HH, testimony of G. W. Chapin.

Ninth. Because the master hath reported, and in effect decided, that to obtain "an account of all assigned and mortgaged property which passed or came into the hands, possession, or control of said Atlantic De Laine Company or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise," other than only "an account of what property owned by James passed," &c., to said defendant corporation or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, this complainant must resort to or institute other and further proceedings.

Tenth. Because the master hath reported that "to carry forward any amounts in debit or credit, to vary the state of the account extracted from the accounts produced, showing the management, results, and condition of the corporate affairs from 1852 to the present time, is manifestly impossible except by undertaking to adjudicate upon the various questions raised as between Charles T. James as stockholder and
556 the Atlantic De Laine Company, and arising out of the management of the business and property of the company, and to settle and determine their respective rights and equities therein."

Eleventh. Because the master hath reported the balance due on the mortgage account, and hath computed interest on the same to January 1st, 1870, but hath not credited against said sum in payment of said

interest, or in cancellation of said principal sum, the earnings, or any part of the earnings, of said mortgaged property held by said defendant corporation or George W. Chapin, mortgagees, since the date of said instruments of release and settlement.

Evidence referred to: Exhibits D, L, X, C C, K K, H H.
Testimony of J. R. Balch,
" " G. W. Chapin.

Twelfth. Because the master hath not simply reported the gains of the defendant corporation and the results of the business carried on since the date of the instruments of release and settlement, and their management of and dealings with the stock originally subscribed for, owned and held by Charles T. James, and mortgaged, which passed or came into their hands, possession, or control under the operation of said instruments of release and settlement, as requested by the complainant, for the purpose of enabling the court to make its final decree in this cause, but hath in addition declared and reported that the same is superfluous in his present interpretation of the decree, and hath further reported, and in effect decided, that to settle and determine the rights and equities of the complainant in the premises she must resort to or institute other and further proceedings.

Thirteenth. Because the master hath reported that "no dividends were declared by the company unless the court should decree certain payments made to certain stockholders as commissions for endorsing and accepting company paper * * to be dividends," but hath not decided, nor hath he reported his opinion, as to whether said payments were dividends or not.

Evidence referred to: Exhibits L, P, Q.;
Testimony of J. R. Balch,
" " G. W. Chapin.

557 Fourteenth. Because the master hath not allowed and credited the complainant in account with the proportion which the number of shares originally subscribed for by Charles T. James bears to the whole number of shares subscribed and paid for at the date of the instruments of release and settlement, nor with any part of the sum of $231,371.65, with interest thereon to January 1st, 1870, from October 10th, 1861, the date of the payment of said sum by the defendant corporation to certain stockholders as commissions for endorsing and accepting the notes and drafts of the company.

Evidence referred to: same as under the thirteenth objection.

Fifteenth. Because the master hath not executed the decree of the court, in that he hath not stated an account between the complainant mortgagor and all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, as against said company, or said Chapin, as treasurer or trustee, or otherwise, as parties and trustees acting and having acted in their own wrong and with notice.

Evidence referred to: Exhibits L, M, O, P, Q, R, S, U, V, W, X, Y, Z, AA, CC, HH, II, JJ, KK; statement of liabilities January 1, 1868; statement of assets January 1, 1868; bills payable 1851 to 1868.

Testimony of J. R. Balch;
" " G. W. Chapin.

Sixteenth. Because the master hath not stated the account of the

complainant in manner requested by her, by including in its debtor side:

First. The contract-price of the mill;

Second. The amount due for labor and materials outside of and not called for by the contract;

Third. The one hundred and fifty shares of capital stock;

558 Fourth. The gains of the company in the proportion which one hundred and fifty shares of capital stock bears to two hundred and seventy-four, the whole number subscribed and paid for, interest being added from December 31st of each year in which gains were made;

Fifth. Any increase in the value of the stock;

Sixth. One hundred and fifty two hundred and seventy-fourths of the sums paid as commissions for acceptances and endorsements, with interest:

Seventh. The proceeds realized from the securities, other than the stock, given for the loan to Charles T. James, with interest;

And by crediting on said account:

First. The amount actually paid on account of the contract-price of the mill;

Second. The amount actually paid by the defendants for the assignee in completing the contract;

Third. Any balance ascertained to be due on the subscription-price for the one hundred and fifty shares of the capital stock originally subscribed for by Charles T. James;

Fourth. The amount of the loan made by Charles T. James, secured by mortgages and other property;

And because the master hath not executed the decree of the court in that he hath not so as aforesaid stated the complainant's account as against said defendant corporation and George W. Chapin, as treasurer or trustee, or otherwise, as parties and trustees acting and having acted in their own wrong and with notice.

Evidence referred to: same as under the fifteenth objection.

Seventeenth. Because the master hath not allowed the whole nor any part of, but hath rejected, the claim of the complainant for extra work and materials.

559 Evidence referred to: Exhibits D; W. CC.,
Testimony of Lucinda James,
" " William J. Harris,
" " William H. Parkhurst;
Cross-examination of E. Hoyt,
" " Josiah Chapin;
Testimony of A. R. Fisher in original record, as referred to before the master.

Eighteenth. Because the master, while reporting that "the date of the stockholders' meeting next before September 4th, 1868, was October 10th, 1861," hath not reported that the other meetings of stockholders appearing to have been held prior to that of October 10th, 1861, were on October 5th, 1855, and May 22d, 1851.

Evidence referred to: Exhibits L and S.

JAMES H. PARSONS,
Solicitor for Complainant.

The complainant respectfully requests the master to report to the

court the evidence referred to under the several objections filed by her to his draft report.

By her solicitor.

JAMES H. PARSONS.

560 MM.

LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET AL.

The respondents object to the master's report:

First. Because he finds that the interposition of Chapin and the cestuis que trustent in the mortgage in the pleadings was formal merely.

And they insist that he ought to find that Chapin and his cestuis que trustent were the mortgagees not only in form, but substantially and to all intents and purposes.

And they request him to change his report in this respect.

And they also request him to report the facts following, to wit:

a. The agreement under which the cestuis que trustent of Chapin made the advances to James, which the mortgage was made to secure.

b. That they were never re-imbursed by the respondent corporation, except by the distribution of the stock of James.

c. That the respondent corporation do not appear to have been at any time, even formally, mortgagees under said mortgage.

Evidence referred to: Letter and agreement, original record, Exhibits D and E; testimony of G. W. Chapin before master; respondents' account, Exhibit L.

Second. Because he has reported a statement of the business
561 of the Atlantic De Laine Company, down to January 1st, 1870, the condition of the company at different periods, assets and liabilities, gains and losses in different years, investments, claims against the company and mode of payment, assessments, capital stock paid in, stockholders at different periods, meetings of directors and stockholders at different periods, and action thereat, as shown by the various accounts and exhibits filed by the respondents or produced by the accountant and book-keeper appointed in the case as aforesaid.

And they insist that all these matters are foreign to the proper subject of inquiry before him. And they request him not to report the same or any testimony relating to the same.

A. PAYNE,
R. W. GREENE,
Solicitors for Respondents.

The respondents, in reference to the complainant's claim for extra work, refer to the testimony of George W. Chapin, Josiah Chapin, and Edwin Hoyt, and request the master to report the same.

The respondents, protesting that the master ought not to report any of the results of the business or doings of the company subsequent to March 3d, 1853, request him, if he reports any testimony relating thereto, to report the testimony of William Goddard, William S. Patten, John R. Balch, George W. Chapin, Josiah Chapin, Edwin Hoyt, and Thomas A. Doyle.

A. PAYNE,
R. W. GREENE,
Solicitors for Respondents.

562 *Exceptions of the complainant to the master's report.—Filed December 30, 1870.*

The complainant excepts to the report of the master heretofore filed in the above-entitled suit, and sets forth the following as her grounds of exception thereto:

First. In that the said master hath reported that he erred in his original ruling that the account called for by the complainant in regard to the shares of stock subscribed for by Charles T. James in the defendant corporation, the value thereof, the income, dividends, profits, or increase in value thereof from year to year, from July, 1851, to the date of the decree, were properly called for by the decree.

Second. In that the said master hath reported and decided that the interpretation put upon the decree by the respondents, that the accounts rendered by them (referred to in his report as Exhibits F, G, and H, which said exhibits accompany his report) under the contract and with the assignee, and under the mortgage, down to the date of the instruments of release and settlement, which, by the terms of the decree, are declared to be void and to be set aside as having been obtained by fraudulent representations and concealments, with interest computed thereon, were a compliance with the motion of the complainant, and, in accordance with the decree, was the correct interpretation of the decree.

Third. In that the said master hath reported and decided that an account of the value, income, dividends, profits, and increase in value of the stock of the defendant corporation originally subscribed for, owned and held by Charles T. James, was not called for by the decree, and hath confined himself to stating the contract and mortgage account, and the balance thereon.

563 Fourth. In that the said master hath reported and decided that it is his duty only to state the accounts under the contract and mortgage, and determine the balance one way or the other.

Fifth. In that the said master hath reported and decided that by the anguage of the decree, which directed him to "take an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise," only "is intended an account of what property owned by James passed," &c.

Sixth. In that the said master, while declaring that, by an account of all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement, or otherwise, "is intended an account of what property passed," &c., hath not ascertained, nor hath he reported, what property passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under th e operation of said instruments of release and settlement, or otherwise.

Seventh. In that the said master hath reported that one hundred and thirteen was the number of shares of the capital stock of the Atla ntic De Laine Company originally held by Charles T. James, and by ,him assigned and mortgaged, passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement, or otherwise.

Eighth. In that the said master hath not reported that one hun-
564 dred and fifty shares of the capital stock of the Atlantic De Laine Company originally held by Charles T. James, and by him assigned and mortgaged, passed or came into the hands, possession, or control of said Atlantic De Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement, or otherwise.

Ninth. In that the said master hath reported, and in effect decided, that to obtain "an account of all assigned and mortgaged property which passed or came into the hands, possession, or control of said Atlantic De Laine Company or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, other than only "an account of what property owned by James passed," &c., to said defendant corporation, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement, or otherwise, this complainant must resort to or institute other and further proceedings.

Tenth. In that the said master hath reported that "to carry forward any amounts in debit and credit, to vary the state of the account extracted from the accounts produced, showing the management, results, and condition of the corporate affairs from 1852 to the present time, is manifestly impossible except by undertaking to adjudicate upon the various questions raised as between Charles T. James as stockholder and the Atlantic De Laine Company, and arising out of the management of the business and property of the company, and to settle and determine their respective rights and equities therein."

Eleventh. In that the said master hath reported the balance due on the mortgage account, and hath computed interest on the same to January 1st, 1870, but hath not credited against said sum, in payment of said interest or in cancellation of said principal sum, the earnings, or any part of the earnings, of said mortgaged property held by said defendant corporation or said George W. Chapin, mortgagees, since the date of said instruments of release and settlement.

565 Twelfth. In that the said master hath not simply reported the gains of the defendant corporation and the results of the business carried on since the date of the instruments of release and settlement, and their management of and dealings with the stock originally subscribed for, owned, and held by Charles T. James, and mortgaged, and which passed or came into their hands, possession, or control under the operation of said instruments of release and settlement, as requested by the complainant, for the purpose of enabling the court to make its final decree in the cause, but hath, in addition, declared and reported that the same is superfluous in his present interpretation of the decree, and hath further reported, and in effect decided, that to settle and determine the rights and equities of the complainant she must resort to or institute other and further proceedings.

Thirteenth. In that the said master hath reported that "no dividends were declared by the company, unless the court should decree certain payments made to certain stockholders as commissions for endorsing and accepting company paper * * to be dividends," but hath not decided, nor hath he reported his opinion, as to whether said payments were dividends or not.

Fourteenth. In that the said master hath not allowed and credited the complainant in account with the proportion which the number of shares originally subscribed for by Charles T. James bears to the whole number of shares subscribed and paid for at the date of the instruments of release and settlement, nor with any part of the sum of

$231,471.65, with interest thereon to January 1st, 1870, from October 10th, 1861, the date of the payment of said sum to certain stockholders as commissions for accepting and endorsing the notes and drafts of the company.

Fifteenth. In that the said master hath not executed the decree of this court, because he hath not stated an account between the complainant mortgagor, and all assigned and mortgaged property originally held by Charles T. James, and by him assigned and mortgaged, which passed or came into the hands, possession, or control of said Atlantic De
566 Laine Company, or George W. Chapin, as treasurer or trustee, or otherwise, under the operation of said instruments of release and settlement or otherwise, as against said company or said Chapin, as treasurer or trustee, or otherwise, as parties and trustees acting and having acted in their own wrong and with notice.

Sixteenth. In that the said master hath not stated the account of the complainant in the manner requested by her, by including on its debtor side:

First. The contract-price of the mill;

Second. The amount due for labor and materials outside of and not called for by the contract;

Third. The one hundred and fifty shares of capital stock;

Fourth. The gains of the company in the proportion which one hundred and fifty shares of capital stock bear to two hundred and seventy-four, the whole number subscribed and paid for, interest being added from December 31st of each year in which gains were made;

Fifth. Any increase in the value of the stock;

Sixth. One hundred and fifty two hundred and seventy-fourths of the sums paid as commissions for acceptances and endorsements, with interest;

Seventh. The proceeds realized from the securities, other than the stock, given for the loan to Charles T. James, with interest;

And by crediting on said account:

First. The amount actually paid on account of the contract-price of the mill;

Second. The amount actually paid by the defendants for the assignee in completing the contract;

567 Third. Any balance ascertained to be due on the subscription price for the one hundred and fifty shares of the capital stock originally subscribed for by Charles T. James;

Fourth. The amount of the loan made to Charles T. James, secured by mortgages and other property;

And in that the said master hath not executed the decree of the court, because he hath not so as aforesaid stated the complainant's account as against said defendant corporation and George W. Chapin, as treasurer or trustee, or otherwise, as parties and trustees acting and having acted in their own wrong and with notice.

Seventeenth. In that the said master hath not allowed the whole nor any part of, but hath rejected, the claim of the complainant for labor done and materials furnished outside of and not called for by the contract.

Eighteenth. In that the said master, while he hath reported that "the date of the stockholders' meeting next before September 4th, 1868, was October 10th, 1861," hath not reported, as requested by the complainant, that the other meetings of stockholders appearing to have been held prior to that of October 10th, 1861, were on October 5th, 1855, and May 22d, 1851.

JAMES H. PARSONS,
Solicitor for Complainant.

568 *Exceptions of the respondents to the master's report.—Filed December* 30, 1870.

The respondents except to the report of the master, heretofore filed in the above-entitled cause, and set forth the following as the grounds of exception thereto:

First. Because in and by his said report the master finds that the interposition of Chapin and the cestuis que trustent in the mortgage in the pleadings mentioned was formal merely, whereas he ought to have found that Chapin and his cestuis que trustent were the mortgagees not only in form, but substantially and to all intents and purposes.

Second. Because in and by his said report the master hath reported a statement of the business of the Atlantic De Laine Company down to January 1st, 1870, the condition of the company at different periods, assets and liabilities, gains and losses in different years, investments, claims against the company and mode of payment, assessments, capital stock paid in, stockholders at different periods, and action thereat, as shown by the various accounts and exhibits filed by the respondents or produced by the accountant and book-keeper appointed in the case; whereas while the respondents do not deny, but admit, the truth of the statements showing the condition of the company at the time of the settlement with the said Frieze, the same having been made a part of the dealings between the said Frieze and the said Chapin, they yet claim and insist that all subsequent matters relating to the business and affairs of the company down to January 1st, 1870, are foreign to any proper subject of inquiry before the master, and ought not to have been reported on by him.

A. PAYNE,
Solicitor for the Respondents.

569 *Petition of respondents to reverse the interlocutory decree.—Filed December* 30, 1870.

The respondents respectfully suggest to this honorable court that they are advised and believe that the interlocutory decree heretofore passed in the said cause is erroneous, and that they are advised and believe that this honorable court, on reconsideration thereof, would use the power of this honorable court to take the same under its consideration and reverse the same; and these respondents pray that they may be heard thereon at the time of the hearing of exceptions to the master's report thereon, or otherwise, as this honorable court may direct.

And these respondents, not waiving but insisting upon other causes or reasons for the reversal of said interlocutory decree, which the respondents are advised and believe would be open to them upon an appeal from this honorable court to the Supreme Court of the United States, or upon a formal petition for rehearing in this honorable court, hereby assign as causes or grounds for this suggestion and petition to this honorable court—

First. That it appears from the testimony in the original cause that a certain statement of the condition and affairs of the Atlantic De Laine Company was made by George W. Chapin to Lyman B. Frieze, and was made the basis of the computations for the settlement, which was set aside.

And the court, in its opinion, say that said statement or account was the only one deserving the name which was ever presented by said Chapin to said Frieze and made the basis of or used in said settlement.

And the respondents, upon the call of the complainant, have filed with the master, under oath, an account, of which the said statement forms a part, setting forth and showing that said statement was correct and true.

And the accountant appointed by the master and agreed on by the parties in said case hath produced before the master the
570 books and papers of the Atlantic De Laine Company, from which it appears that said statement was correct and true, and the said accountant hath sworn that it appears from the books and papers of the said Atlantic De Laine Company that said statement was a correct and true statement of the condition and affairs of the said company at the time when it purports to have been such.

And the master hath found, in and by his report, that the said statement was a correct and true statement of the condition and affairs of the said Atlantic De Laine Company at the time when it purports to have been such, and the truth of the finding of the master in this regard is not denied but admitted by the respondents, and the complainant has not controverted the same by any evidence, nor has taken any exception to the finding and report of the master in this regard.

And the respondents respectfully submit that the finding of the master is also supported by the evidence heretofore taken in the said cause.

Wherefore these respondents are advised and believe that it is the right of this honorable court to reconsider the case as it now stands, and to determine whether the said interlocutory decree is not erroneous and ought not to be reversed.

And the respondents ask to be heard in the premises.

A. PAYNE.
Solicitor for Respondents.

OCTOBER 3, 1871.

Petition of respondents to reverse the interlocutory decree withdrawn without prejudice to renew the petition at the proper time.

571 And said cause came on to be heard upon the exceptions to the master's report at the June term of said court, 1871, to wit, October 3d, 1871, before Justice Clifford and Judge Knowles, and was heard, and held for advisement.

And said cause was continued to the June term, 1872, when the following order was entered, June 20, 1872:

"Ordered, That the report of the master in this case be, and the same is hereby, recommitted with instructions to the master to append a supplemental report comprising two summary statements, showing—

"First. The result to which he comes under the theory of accounting which he first adopted on motion of the complainant.

"Second. Showing the result to which he comes under the second theory, which he adopted in accordance with the views of the respondents, reserving the exceptions filed by each party, and giving to each party the right to except to the supplemental report."

572 Circuit court of the United States, district of Rhode Island.

LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY, ET ALS.

Master's supplemental report.—Filed August 19th, 1872.

The undersigned, to whom was committed the original report heretofore made in said case by the following order:

"Ordered that the report of the master in this case be, and the same

is hereby, recommitted with instructions to the master to append a supplemental report comprising two summary statements, showing—

"First. The result to which he comes under the theory of accounting which he first adopted on motion of the complainant;

"Second. Showing the result to which he comes under the second theory, which he adopted in accordance with the views of the respondents, reserving the exceptions filed by each party, and giving to each party the right to except to the supplemental report"—

respectfully reports that, in order to bring the supplemental report down to the present time, he made, on the 2d of July, 1872, the following order on the respondents:

"Ordered by the master, that the respondents file further accounts, bringing the accounts heretofore filed, and marked, respectively 'F,' 'G,' and 'H,' with interest computed on the several items, down to the
573 present time; and also further accounts, showing gain or loss in the business of the Atlantic De Laine Company since December 31st, 1869."

It being suggested by the respondents that it was not practicable at present to bring down the accounts to a later period than December 31st, 1871, and the complainant assenting to the filing of such accounts as a present compliance with the order, the respondents, on August 1st, 1872, filed the account marked "NN," being the balance of the accounts F, G, and H, as found by the master, January 1st, 1870, with interest computed on the items to January 1st, 1872, and an account of gains and losses in the business of the Atlantic De Laine Company in the years 1870 and 1871, marked "OO." Also an account, at the request of the master, showing amount paid in on assessment of October 5th, 1855, marked "PP."

The master herewith appends two summary statements, showing the results he has arrived at under the two theories of accounting referred to in the foregoing order of the honorable court, the one taking into consideration only the contract-account, mortgage-account, assignee's account in completing the contract, and finding the balance one way or the other, but excluding all consideration of the various accounts showing general management and results of the business of the Atlantic De Laine Company, and its condition at different periods, assets, and liabilities, gains and losses, in the different years to the said 1st of January, 1872; the other showing the result to which the master comes when taking into consideration the management of the affairs of the corporation, gains, losses, &c., as above mentioned, down to January 1st, 1872.

SUMMARY STATEMENT OF RESULTS FOUND BY THE MASTER ON THE THEORY OF ACCOUNTING FIRST ADOPTED BY HIM ON MOTION OF THE COMPLAINANT.

Upon the theory finally adopted by the master in his original report, the figures, with interest computed to January 1st, 1872, stand thus:

574 Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, January 1st, 1872.

DR.

For balance due under contract-account..... $25,075 42

CR.

By amount of account of Atlantic De Laine Company against Lyman B. Frieze, assignee, belonging to estate of Charles T. James, to pay..... .... $110,954 14

By balance due under mortgage account.....	90, 647	05
By amount paid William Mason & Co. in settlement of bond	11, 542	19
Balance due Altantic De Laine Company, January 1st, 1872	$188, 067	96

How ought this balance to be varied on the theory of accounting first adopted on motion of the complainant? The whole number of shares fully paid for was 237, of which Charles T. James paid for 113.

Certificates were issued January, 1854, for 236 shares. The history of the stock originally subscribed for, and the distribution of stock by which the full amount of 300 shares had been issued December 31st, 1867, are detailed in the testimony of George W. Chapin. It does not appear, however, that more than 237 shares were ever paid for in any other manner than by distribution to stockholders in payment of alleged claims against the company by certain stockholders for endorsements. The master is of the opinion that Charles T. James was the owner of $\frac{113}{237}$ of the capital stock of the company, subject to any just claim the company may have upon the same.

On the 5th of October, 1855, to meet the exigencies of the company an assessment was made upon the shares of the capital stock held by the stockholders at the time (but not upon the shares held by the company) $525.00 on each share, which was paid by all the stockholders except Hill, Carpenter & Co., amounting in all to the sum of $47,250.00.

Irrespective of the question of the validity of the assessment, the master is of the opinion, the said assessment having been paid in for
575 the benefit of the company, that the complainant should be charged with the proportionate part of the amount paid in; in other words, she should not take her stock "with the value added to it by the paid assessment of the other stockholders," as the court suggested in relation to the stock of Hill, Carpenter & Co., in 5 Rhode Island, p. 472. The master therefore charges the complainant with $\frac{113}{237}$ of $47,250.00, with interest thereon to January 1st, 1872, $43,138.55.

On the 10th of October, 1861, the sum of $231,371.65 in cash and stock, valued at $1,000 per share, was distributed to the other stockholders as compensation for endorsing the paper of the company.

The stockholders of the company were severally liable for the debts of the company, they never having complied with the provisions of the laws of Rhode Island to exempt the stockholders from individual liability.

The master is of the opinion that this payment must be considered as a method of making a dividend, and that Charles T. James should be credited with $\frac{113}{237}$ of the same, with interest from October 20th, 1861, to January 1st, 1872, the date of accounting, viz., the sum of $177,976.88.

It appears by the accounts rendered, that the results of the business of the corporation from the commencement of business to January 1st, 1872, show losses in certain years amounting to $1,061,299.18, and gains in other years amounting to $1,498,248.47.

No dividends of gains or profits have ever been declared by the corporation, other than the foregoing, construed by the master as a dividend. The gains and profits have, from time to time, been invested in improving the property of the company, with the knowledge and acquiescence of the stockholders at the time, and the action was subsequently ratified and approved by the directors and stockholders at meetings legally assembled.

The master is of the opinion that the estate of Charles T. James is not entitled to be credited in the accounts with any part of the gains so invested as gains held by the company, and not set apart as and de-

cleared as dividends to the stockholders. He does not regard this
576 case as analogous to the ordinary bill to redeem against a mortgagee in possession who is accountable for all rents and profits, and is not entitled to be credited with improvements made.

For a multitude of reasons which the master does not think it necessary to recite, (the supplemental order calling only for his conclusions and results,) he is of the opinion that it would be inequitable for the complainant to take the stock with all the improvements accruing and incidents arising out of the investment of the gains and earnings, and thus inseparable from the stock, and at the same time receive or be credited with a portion of these gains and earnings in reduction of the debt to the company, the payment of which redeems the stock.

SUMMARY STATEMENT IN FIGURES OF RESULTS ON THEORY OF ACCOUNTING FIRST ADOPTED BY MASTER.

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, July 1st, 1872.

DR.

For balance due under contract-account	$25,075 42
" $\frac{113}{237}$ of $231,371.65 distributed to the stockholders October 10th, 1861, with interest to January 1st, 1872	177,976 88

CR.

By amount of account Atlantic De Laine Company against Lyman B. Frieze, assignee, belonging to the estate of Charles T. James to pay	110,954 14
" balance due under mortgage-account	90,647 05
" amount paid William Mason & Co. in settlement of bond	11,542 19
" $\frac{113}{237}$ of $47,250.00, amount paid into the company as assessments by certain stockholders, October 5th, 1855, with interest to January 1st, 1872	43,138 55
" balance due Atlantic De Laine Company, January 1st, 1872	53,229 63

577 SUMMARY STATEMENT ON THE SECOND THEORY OF ACCOUNTING, FINALLY ADOPTED BY MASTER IN ORIGINAL REPORT, VARIED ONLY BY INTEREST-ACCOUNT TO JANUARY 1ST, 1872.

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, January 1st, 1872.

DR.

For balance due under contract-account	$25,075 42

CR.

By amount of account of Atlantic De Laine Company against Lyman B. Frieze, assignee, belonging to estate of Charles T. James to pay	110,954 14
" balance due under mortgage-account	90,647 05

" amount paid William Mason & Co. in settlement of bond	11,542 19
Balance due Atlantic De Laine Company, January 1st, 1872	188,067 96

RECAPITULATION.

Balance due Atlantic De Laine Company, under first theory	$53,229 63
Balance due Atlantic De Laine Company, under second theory	188,067 96

Respectfully submitted.

CHARLES HART, *Master.*

578 "NN."

ATLANTIC DE LAINE COMPANY.

C. T. James' contract-account, marked "F."

Balance to credit, December 31st, 1869	$15,889 86
Balance interest to credit, 2 years, to Dec. 31, 1871	1,360 28
To credit Dec. 31, 1871	$17,250 14

Assignee's account, marked "G."

Balance to debit, December 31, 1869	$104,752 74
Interest to debit, 2 years, to Dec. 31, 1871	6,201 40
To debit Dec. 31, 1871	$110,954 14

Mortgage account, marked "H."

Balance to debit, Dec. 31, 1869	$86,114 17
Interest to debit, 2 years, to Dec. 31, 1871	4,532 88
To debit Dec. 31, 1871	$90,647 05

Account paid for assignee to William Mason.

Balance to debit, Dec. 31, 1869	$10,756 19
Interest to debit, 2 years, to Dec. 31, 1871	786 00
To debit Dec. 31, 1871	$11,542 19

Account judgment against Charles T. James.

Balance to debit, Dec. 31, 1869	$11,721 19
Interest to debit, 2 years, Dec. 31, 1871	816 48
To debit Dec. 31, 1871	$12,537 67

PROVIDENCE, *August 1st*, 1872.

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treas.*

Filed August 14th as of August 1st, 1872, and sworn to before me.
CHAS. HART, *Master.*

579 "OO."

Result of the business of the Atlantic De Laine Company for the year ending December 31, 1870.

Loss $312, 308 43

For the year ending December 31, 1871.

Loss $55, 636 34

PROVIDENCE, *August 1st*, 1872.

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treas.*

Filed August 14th as of August 1st, 1872, and sworn to before me.
CHAS. HART, *Master.*

"PP."

PROVIDENCE, *August* , 1872.

Assessment made October 5th, 1855, was—

Paid by Hoyt, Tillinghast & Co	$13, 125 00	on 25 shares.
Paid by Globe Printing Co	13, 125 00	on 25 shares.
Paid by Hacker, Lea & Co	13, 125 00	on 25 shares.
Paid by Dodge, Tucker & Co	7, 875 00	on 15 shares.
	$47, 250 00	

ATLANTIC DE LAINE COMPANY,
Providence, August 1st, 1872.

ATLANTIC DE LAINE CO.,
THOS. A. DOYLE, *Treas.*

Filed August 14th as of August 1st, 1872, and sworn to before me.
CHAS. HART, *Master.*

580 LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET ALS.

Complainant's exceptions to the supplemental report of the master.—Filed Aug't 30, 1872.

The complainant, not waiving but expressly reserving and insisting upon the exceptions heretofore filed to the master's original report, except to the supplemental report of said master, and state the following as her grounds of exception thereto:

First. In that the master hath reported that the whole number of shares of the capital stock of the defendant corporation, as originally organized, was two hundred and thirty-seven, of which one hundred and thirteen were paid for by Charles T. James, whereas he should have reported that Charles T. James subscribed for one hundred and fifty shares of said capital stock, upon which he had paid one hundred and thirteen thousand dollars, and that three hundred shares of said capital stock had been issued by said corporation to other persons than the said Charles T. James, or his representatives.

Second. In that the said master hath stated the accounts set forth in

his report upon the basis that the entire number of shares of the capital stock actually paid for was but two hundred and thirty-seven, of which Charles T. James had paid for one hundred and thirteen, and thus has charged his estate with $\frac{113}{237}$ of the losses, and credited it with $\frac{113}{237}$ of the gains of said corporation, instead of one-half of each, to which said estate is entitled.

Third. In that the said master hath admitted into his accounts as one of the items with which the estate of Charles T. James should be charged the sum of $47,250.00, paid by the stockholders of said corpora-
581 tion to said corporation as assessments upon the shares of said corporation held by said other stockholders, when the assessment by virtue of which the said sum was paid was illegal or void, and had so been declared by the Supreme Court of the State of Rhode Island.

Fourth. In that the said master hath reported that the gains or profits of said corporation "have from time to time been invested in improving the property of the company, with the knowledge and acquiescence of the stockholders at the time," whereas it appeared that neither Charles T. James, nor the complainant, as his representative, entitled to one-half of the stock of said corporation, or to $\frac{113}{237}$ thereof in the opinion of the master, ever had any knowledge that said improvements were being made, or ever acquiesced in their being made.

Fifth. In that the said master hath reported that "the action" (with regard to the improvements) "was subsequently ratified and approved by the directors and stockholders at meetings legally convened," whereas it appeared that said pretended meetings were held after the decision of this court in this case upon final hearing, and the entering of the decree under which the said master was acting, and that this complainant was not represented or heard at either of said alleged meetings.

Sixth. In that the said master hath reported "that the estate of Charles T. James is not entitled to be credited in the accounts with any part of the gains so invested" (in improvements) "as gains held by the company," the same not having been set apart and declared as dividends to the stockholders.

Seventh. In that the said master hath reported "that he does not regard this case as analogous to the ordinary bill to redeem against a mortgagee in possession, who is accountable for all rents and profits, and is not entitled to be credited with improvements made," whereas the court have determined by the decree under which the said master was acting, that the complainant was entitled to redeem the property therein mentioned from the defendants, who were adjudged mortgagees wrongfully in possession of the same.

582 Eighth. In that the said master hath reported "that it would be inequitable for the complainant to take the stock, with all the improvements accruing and incidents arising out of the investment of the gains and earnings, and thus inseparable from the stock, and at the same time receive or be credited with a portion of these gains and earnings in reduction of the debt to the company, the payment of which redeems the stock," whereas the decision of said question was not within the duty or jurisdiction of the master, but the same had been determined by the court, and the duty of the master was to state said accounts as against the defendants as mortgagees wrongfully in possession, with no power to bind the complainant to any of their acts in making said investments, or in applying to other purposes the earnings of said corporation, which should first have been applied to the payment of said mortgage-debt.

Ninth. In that the said master, although requested by the com-

plainant, hath refused to state the account of the dealings of the defendants with said mortgaged property, upon the principle that the defendants were mortgagees wrongfully in possession as follows, the complainant being entitled to one-half interest therein:

Atlantic De Laine Company Dr. to Lucinda James, admx.

To one-half of gain for 1855, with interest to Sept. 1, 1872	$29,983 50
" " " " 1856, " " " " "	40,765 21
" " " " 1857, " " " " "	3,922 05
" " " " 1858, " " " " "	38,963 13
" " " " 1859, " " " " "	93,700 01
" " " " 1860, " " " " "	83,570 32
" " " " 1861, " " " " "	88,707 84
" " " " 1862, " " " " "	285,054 02
" " " " 1863, " " " " "	243,770 93
" " " " 1864, " " " " "	81,354 20
" " " " 1868, " " " " "	175,608 80
" " commissions, with int. from Oct. 10, 1861, to Sept. 1, 1872	191,843 89
	$1,387,243 90
To balance contract-account, with interest to Sept. 1, 1882	26,024 02
	$1,413,267 92

583

CR.

By claims against Frieze, with interest to Sept. 1, 1872	$112,612 97
" balance of mortgage-account, with interest to Sept. 1, 1872	92,370 75
" amount paid William Mason, with interest to Sept. 1, 1872	11,804 19
	$216,787 91
Balance	$1,196,480 01

Tenth. In that the said master hath refused to state said account on the principle as aforesaid, allowing the complainant to have the interest of $\frac{11}{23}\frac{3}{7}$ therein, as found by him as follows:

Atlantic De Laine Company, Dr to Lucinda James, admx.

To $\frac{11}{23}\frac{3}{7}$ of gain for 1855, with interest to Sept. 1, 1872	$28,371 26
" " " " 1856, " " " " "	38,870 49
" " " " 1857, " " " " "	3,788 15
" " " " 1858, " " " " "	37,154 52
" " " " 1859, " " " " "	89,446 26
" " " " 1860, " " " " "	79,680 75
" " " " 1861, " " " " "	83,707 24
" " " " 1862, " " " " "	270,814 59
" " " " 1863, " " " " "	239,686 92
" " " " 1864, " " " " "	78,566 38
" " " " 1868, " " " " "	159,410 21
" " of commissions, with int. from Oct. 10, 1861, to Sept. 1, 1872	182,387 25
	$1,281,883 32
To balance contract-account, with interest to Sept. 1, 1872	26,204 02
	$1,307,907 34

CR.

By claims against Frieze, with interest to Sept. 1, 1872	$112,612 97
" balance of mortgage-account, with interest to Sept. 1, 1872	92,370 75
" amount paid William Mason, with interest to Sept. 1, 1872	11,804 19
	$216,787 91
Balance	$1,091,119 43

RECAPITULATION.

Balance due admx. as owner of 150 shares of capital stock	$1,159,480 01
Balance due admx. on the theory that she is entitled to $\frac{11}{23}\frac{3}{7}$ of capital stock	1,091,1 1 43

Eleventh. In that the said master hath not complied with the order of the court and set forth the accounts required by the decree "under the theory of accounting which he first adopted on motion of the complainant."

584 Twelfth. In that the said master accepted the paper marked Exhibit OO, as a compliance with the order of the court, and with the order of the master made upon complainant's motion A.

Thirteenth. In that the master declined to consider the objections of the complainant to defendants' Exhibit OO, as set forth in a paper filed with the master on the 11th day of August, 1872, a copy of which is herewith filed, marked No. 1.

Fourteenth. In that the master submitted no draft report to the parties for their objections before filing his report.

By her solicitors, J. H. PARSONS.
T. A. JENCKES.

No. 1.

LUCINDA JAMES, ADMINISTRATRIX, *vs.* ATLANTIC DE LAINE COMPANY, ET ALS. } Before Charles Hart, esq., master.

The above-named complainant having, by the master's permission, inspected the accounts filed with him by the defendants on the 15th of August as of August 1st, respectfully interpose the following objections to the same:

First. She objects to the said accounts because the same are insufficient and incomplete in that they do not show or set forth the
585 condition of said defendant corporation for at the end of any six months or any year of its business during the period covered by said accounts.

Second. She objects to the truthfulness of said accounts because the same have not been verified as of the knowledge of the affiant, nor by the oath of any person having knowledge of the facts.

By her solicitors, J. H. PARSONS.
T. A. JENCKES.

I certify that the foregoing is a true copy of a paper filed in my office August 17th, 1872, and now remaining there on file.

CHAS. HART,
Master in the above entitled cause.

586 LUCINDA JAMES, ADMINISTRATRIX, *vs.* ATLANTIC DE LAINE COMPANY, ET ALS. }

Respondents' exceptions to the master's supplemental report.—Filed Aug't 30, 1872.

The respondents, not hereby waiving, but expressly reserving and and insisting upon their exceptions heretofore taken to the original report of the master in said cause, and especially that portion thereof wherein he reports a statement of the business and condition of the respondent corporation subsequent to the date of the settlement with said Frieze in the pleadings mentioned—hereby except to that portion of his supplemental report wherein he finds and reports as follows, viz:

"On the 10th of October, 1861, the sum of $231,371.65 in cash and

stock valued at $1,000 per share was distributed to the other stockholders as compensation for endorsing the paper of the company.

"The stockholders of the company were severally liable for the debts of the company, they never having complied with the provisions of the law of Rhode Island to exempt the stockholders from individual liability. The master is of the opinion that this payment must be considered as a method of making a dividend, and that Charles T. James should be credited with $\frac{113}{237}$ of the same, with interest from October 20th, 1861, to January 1st, 1872, the date of accounting, viz., the sum of $177,976.88."

And for reasons for exceptions thereto, allege:

First. That it distinctly appears from the accounts filed that the master, upon the call of the respondents, and under the oath of the
587 respondent corporation, by its proper officer, the correctness of which accounts is not contested by any evidence, and also by the testimony of witnesses produced and examined before the master, the truth of whose testimony is not contested by any evidence in the cause, that said payment was not a method of making a dividend, but that by reason of the fact that the respondent corporation had no capital or credit wherewith to conduct its business, and was compelled to resort to the credit of its stockholders, it was understood and agreed that the stockholders should from time to time accept and endorse the drafts and other commercial paper of the company, and in case the business of the company should be successful, that the company should compensate such stockholders for such acceptances and endorsements; and under this understanding and agreement, and by means of such acceptances and endorsements the business of the company was conducted, and that compensation was made to such stockholders pursuant to such understanding and agreement, and to the claims of such stockholders made under the same, to the amount of $241,371.65, with its proportion of which sum, viz., $\frac{113}{237}$ thereof, the estate of Charles T. James is properly chargeable, and ought to have been charged upon the theory of accounting originally adopted by the master upon the request of the complainant, and the master ought, pursuant to the order of the court, so to have reported, in and by his supplemental report.

Second. Because it appears by accounts filed, and the evidence produced before the master as aforesaid, that such payment was not, in any sense, a dividend or a method of making a dividend, and was not at the time so considered or treated by the parties thereto, or any of them, but was at all times treated and considered by each and all of them as a payment for acceptances and endorsements to the parties making the same in the proportions in which they were made by them, and at the usual and reasonable rate of compensation for such acceptances and endorsements, and that such payment was necessary to enable the company successfully to conduct its business.

588 Third. Because it appears from accounts filed and evidence produced before the master as aforesaid:

That such payment was made in good faith and pursuant to a valid agreement.

That it was necessary for the respondent corporation to procure such acceptances and endorsements to enable it successfully to prosecute its business.

That the agreement between the respondent corporation and such stockholders, whereby the latter agreed to furnish such acceptances and endorsements, and the former agreed to make compensation for the same, was a valid agreement for a good and valuable consideration, and binding upon the parties thereto.

That under the said agreement such stockholders made their respective claims each for the usual and reasonable rate of compensation, for the amount of the acceptances and endorsements made by him, and without any reference to the amount of stock in said company held by him, and such claims were duly and properly allowed and paid by said company, whereupon the amount of such payment became and was a proper charge in the expense-account in the conduct of the business of said company; and upon the theory of accounting originally adopted by the master upon the request of the complainant, the estate of Charles T. James was properly chargeable, and ought to have been charged, with its proportion thereof, and the master, upon the theory aforesaid, and pursuant to the order of the court, ought so to have reported in and by his supplemental report.

Fourth. Because it appears from the accounts and testimony produced before the master as aforesaid, that even if such payment could or ought to be treated as a dividend or as a method of making a dividend, the master has erred in crediting the estate of Charles T. James with $\frac{113}{237}$ of such payment in cash, but should upon that theory have credited the estate of Charles T. James with $\frac{113}{237}$ of the amount of stock distributed in making such payment, and with $\frac{113}{237}$ of the balance of such payment only in cash.

589 Fifth. Because the said portion of the master's supplemental report is contrary to evidence and to equity and good conscience.

Wherefore, for the reasons hereinbefore set forth, the respondents except to said portion of the master's supplemental report, and pray that the same may be overruled.

And the respondents, in support of the said exceptions, crave leave to refer to the exhibits and evidence reported by the master in his original report, as follows:

Exhibits.—Exhibit L, pp. 52–3. Exhibits P and Q, pp. 60–61.

Testimony.—George W. Butts, pp. 38, et seq., George W. Chapin, p. 45. William Goddard, p. 55. William S. Patton, pp. 57–8. Edwin Hoyt, p. 59. John R. Balch, pp. 5 and 6.

By their solicitor, A. PAYNE.

590 LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET ALS.

Complainant's additional exceptions to master's supplemental report.—Filed Aug't 30th, 1872.

The complainant, in addition to the exceptions filed by her to the supplemental report of the master, files also further exceptions thereto, and sets forth the grounds thereof, as follows:

Fifiteenth. In that the said master hath not, as required by the decree of this court, stated the accounts between the parties therein named separately, distinguishing the several accounts of mortgaged property; whereas he should have stated the mortgage-account by itself, and the claims against the estate of said James in the hands of said Frieze, his assignee, by themselves, in order that the court might deal with the same in its final decree as it may deem just and equitable.

Sixteenth. In that the master hath not reported that the only sum

secured by the mortgage sought to be redeemed which can be claimed by said George W. Chapin as trustee, or by said Atlantic De Laine Company, is the sum of $90,647.05, named in the statement of said master as "balance due under mortgage-account," but hath included in said statement other sums not named in or secured by the mortgage sought to be redeemed.

Seventeenth. In that the said master hath not stated the sums due from Charles T. James, which are secured by his instrument of assignment, to wit:

The account of the Atlantic De Laine Company, which the master finds to be the sum of	$110,954 14
The amount paid William Mason in settlement of bond, which the master finds to be the sum of	11,542 19
The amount due from James for the balance on subscription for stock	37,000 00
591 The amount due Higgins & Sons, which amounted January 19, 1855, to	15,867 '4
The amount due the assignees of Hill, Carpenter & Co., amounting on the 7th day of April, 1855, to	7,836 44

Eighteenth. In that the said master hath included in his statement of account as between the complainant and the Atlantic De Laine Company, upon which he hath reported a balance against the complainant, the amount of said company's claim against Frieze, assignee, on the contract account, and the amount paid William Mason & Co. in settlement of bond, which are not claims against the complainant in her capacity as administratrix of her husband, the mortgagee, seeking to redeem the mortgaged estate, but are claims secured under the instrument of assignment, and should have been so reported.

Nineteenth. In that the said master hath reported that the payment of "the debt to the company" "redeems the stock," stating the amount of that debt under the first theory to be $53,229.63, and under the second theory to be $188,067.96, including under each theory all items of indebtedness, whether arising out of the mortgage or otherwise; whereas it was not the duty of the master, nor had he any right, power, authority or jurisdiction to determine the conditions upon which the relief to which the complainant is declared to be entitled by the decree under which said master was acting, should be made effective.

Twentieth. In that the master hath found from the evidence that the payment of the sum of $231,371.65 to the other stockholders, October 10, 1861, "must be considered as a method of making a dividend," and hath so reported, and hath declared that the same is "construed by the master as a dividend," and hath credited the complainant with $\frac{113}{237}$ thereof in his summary statement under the theory of accounting first adopted by him, yet he hath not credited her with said proportion or any proportion thereof in his summary statement under the second theory of accounting, whereas she should have been credited therewith under said second theory as well as under the first, and under any theory of accounting which the master might have adopted.

By her solicitors, J. H. PARSONS,
T. A. JENCKES.

592 LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET ALS.

The above-named complainant herewith withdraws the fourteenth ex-

ception by her filed to the master's supplemental report, which was as follows, to wit: "In that the master submitted no draft report to the parties for their objections before filing his report."

And she substitutes therefor and now files the following further exception to said supplemental report, to wit:

In that the said master hath charged against the stock of said defendant corporation, and the interest of said complainant in said stock and the earnings thereof, all the losses made by the corporation in its business subsequent to the date of the settlement which has been decreed to be set aside, whereas the same are included in and form part of the outstanding indebtedness of said corporation.

By her solicitors, J. H. PARSONS.
T. A. JENCKES.

593 *Motion for a revision & revisal of the interlocutory decree —Filed Sept.* 3, 1872.

Circuit court United States, at its adjourned term, Sept. 3*d*, 1872.

And now, upon the coming in of the supplemental report of the master, and the filing of exceptions thereto, the respondents move the court that they may have leave to renew their petition for a review and revisal of the interlocutory decree in the cause heretofore filed, the hearing upon which was waived at the time of the argument of the exceptions to the original report of the master, and to be heard upon the same under the direction of the court.

By their solicitor, A. PAYNE.

Whereupon the following order was entered:

594 *Order upon motion for a revision & revisal of decree.—Filed Sept.* 3*d*, 1872.

Whereas certain statements in the report of the master tended to show that the court erred in a matter of fact in passing the decretal order in this case; therefore,

Ordered that the application for rehearing made by the respondents be, and the same is hereby, granted as to that fact, and that each party may take further proofs on the question whether the statement of the accounts furnished by the treasurer of the corporation to the assignee was or was not false, as found by the court.

Ordered that the defendants close their proofs upon such question within thirty days from the date of this order, and that the complainant do close her proofs thereon within ten days thereafter.

595 Ordered that the costs of proof taken under this order be paid in the first instance by the party taking the same, and that the expense of printing all the proof be paid by the defendants, subject to the final decree as to costs in this suit.

Ordered further that Frances S. Daniels, esq., be appointed examiner to take proofs under this order. Entered as the order of this court per order thereof this 3d day of Sept., A. D. 1872.

HENRY PITMAN, *Clerk.*

596 Circuit court of the United States, Rhode Island district.

LUCINDA JAMES, ADMINISTRATRIX,
vs.
THE ATLANTIC DE LAINE COMPANY, ET AL.

Examination of witnesses on behalf of the defendants, before Francis A. Daniels, examiner, at his office, No. 29 Weybosset street, in the city of Providence, commencing on the 25th day of September, A. D. 1872, in pursuance of the foregoing order.

SEPTEMBER 25, 1872.

Present, for complainant, J. H. Parsons, T. A. Jenckes; for respondents, A. Payne.

GEORGE W. CHAPIN, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

(Mr. Jenckes, for the complainant, objects to the taking of this deposition, on account of the incompetency of the witness, and generally.)

Direct examination:

(Respondents file a paper, which is marked by the examiner, "Exhibit A, F. A. D., examiner.")

By Mr. Payne:

Interrogatory 1. Please examine the paper presented to you, marked "A," and state what it purports to be.

Answer. It is a press-copy of a statement of the condition of the Atlantic De Laine Company, January 1, 1853, the original of which was sent to Lyman B. Frieze by me, February 26, 1853.

597 Int. 2. Were you at that time treasurer of the Atlantic De Laine Company?

A. I was.

Int. 3. Have you examined the books of the company? and, if so, please state whether the paper marked "A" contains a correct and true statement of the condition of the company at its date; and if not, state in what respect it differs from the books and accounts of the company.

(Objected to as leading, and also generally.)

Int. 4. Please state what was the amount of the bills-payable of the Atlantic De Laine Company on the first of January, 1853.

A. $410,615.39.

Int. 5. What was the amount due agents for advances on goods at that date?

A. $90,026.19.

Int. 6. What was the amount due various persons on account?

A. $51,404.44.

Int. 7. What was the amount of the capital stock of the company at that date?

A. $237,495.53.

Int. 8. What was the aggregate amount of these items at that date?

A. $789,541.55.

Int. 9. What was the amount of the cash and bills-receivable of the company, on hand, at that date?

A. $13,584.92.

Int. 10. What was the cost of the real estate, cassimere department, and amount paid Charles T. James, contract-account?

(Objected to as leading, and also generally.)

A. $310,006.04.

Int. 11. What was the amount due the company at that date from Lyman B. Frieze, assignee?

A. $53,314.77.

598 Int. 12. What was the amount due the company at that date from sundry persons?

A. $2,061.38.

Int. 13. What was the amount, in value, of wool, cotton, and supplies, at mills at that date?

A. $190,692.17.

Int. 14. What was the amount, in value, of the de laines and cassimeres on hand at that date?

A. $149,516.74.

Int. 15. What was the difference in amount between the debts and liabilities and the assets of the company at that date?

A. $70,365.53.

Int. 16. From what sources do you obtain the information which enables you to answer the questions to these items?

A. From the books and accounts of the company.

Int. 17. By whom was the statement on paper, marked "A," made up?

A. By myself.

Int. 18. From the books and accounts of the company?

A. Yes, sir.

Int. 19. Is it a correct statement of the condition of the company taken from the books and accounts at that time?

A. It is.

Int. 20. Was the original, of which this paper, marked "A," is a copy, sent to Lyman B. Frieze, assignee of General James, on or about the 26th day of February, 1853?

A. It was.

Int. 21. Have you examined the list of notes in Exhibit V in the original record annexed to the deposition of George W. Chapin, pages 300, 301, and 302, and the memorandum at the end of that list on page 302, to wit: "The notes given Hoyt & Tillinghast, Hacker, Lea & Co., Dodge, Tucker & Co., are for collateral for their acceptances of their drafts loaned to us," and will you explain these transactions as they appear from the entries upon the books and accounts of the company, and as they were, to your personal knowledge?

A. I have examined the list and memorandum referred to, and also the books and accounts of the company. The company from
599 time to time borrowed the acceptances of their drafts from Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., for which acceptances they gave their notes of same date and amount. The company paid these notes at maturity, and the acceptors paid the drafts. These transactions were independent of drafts drawn and accepted for advances on goods shipped to said parties, as appears by the books, and said drafts and notes do not appear on the accounts current which were rendered to the company by Hoyt & Tillinghast and Hacker, Lea & Co. On the account current of Dodge, Tucker & Co. such drafts are charged to the company, and such notes are credited to the company, one offsetting the other.

Int. 22. Have you examined the paper, heretofore shown you, marked "A," and compared the same with the books and accounts of the company? If so, state whether the item "Due agents for advances on

goods, $90,026.19," includes any of the notes given as collateral for drafts?

A. I have compared said statement with the books and accounts of the company, and said item does not include any of the notes given as collateral for drafts.

Int. 23. Have you examined the statement marked "A" and compared it with the books and accounts of the company? and, if so, state whether the item "De laines and cassimeres on hand, $149,516.72," includes the goods unsold in the hands of commission-merchants, or not.

A. I have done so. Said item includes the de laines and cassimeres in the hands of agents.

Int. 24. Have you examined the books and accounts of the company? and, if so, please state whether or not they show for what the bills-payable to Hill, Carpenter & Co., outstanding December 31, 1852, were given. If so, state what they were given for.

A. I have examined the books and accounts of the company which show for what said notes were given, and find that all the said notes to Hill, Carpenter & Co. were given for wool, excepting two which were given early in November to Hill, Carpenter & Co., who discounted the same and paid the company the proceeds thereof.

Int. 25. State whether you examined the books and accounts
600 of the company; and, if so, state whether these notes to Hill, Carpenter & Co., outstanding December 31, 1852, or any of them, are included in the statement heretofore shown to you marked "A," in the item, "Due various persons on account, $51,404.44;" and, if so, which of such notes are so included?

A. I have examined said books and accounts for the purpose, and find that none of said notes are included in said item.

Int. 26. Assuming the statement heretofore shown to you and marked "A" to be a correct statement of the condition of the Atlantic De Laine Company on the first day of January, 1853, state what, according to said statement, was the value per share of the capital stock of the company at that time.

A. It was worth about seventy per cent., according to said statement.

Cross-examination:

(Counsel for complainant, without waiving the objection to the competency of this witness or the admissibility of his testimony in this cause, or any objection taken to either of the foregoing direct interrogatories, puts the following cross-interrogatories, de bene.)

By Mr. Jenckes:

Cr. int. 1. In giving your deposition, have not the interrogatories been read to you by the counsel, and have you not read your answers from a paper in your hands, previously prepared?

A. Some of the questions have been read to me, and some have not. Some of my answers have been read from a paper in my hands, and some have not.

Cr. int. 2. Have not all the answers since those responsive to questions concerning the items in Exhibit "A" been read from a paper in your hands?

A. Not all of them.

Cr. int. 3. Which have not been read?

A. These answers were not read from any memorandum; the one concerning the correctness of the statement compared with the books; also the one relative to Hill, Carpenter & Co.'s notes.

Cr. int. 4. Had you not prepared a statement concerning those trans-

actions and which you held in your hands at the time of testifying?

601 A. I must answer as before. A part of the answers were prepared, and a part were not.

Cr. int. 5. In giving your answers to the questions concerning the items in Exhibit "A," did you not hold Exhibit "A" in your hands while giving them?

A. I did.

Cr. int. 6. Was there any correspondence between yourself, as treasurer of the Atlantic De Laine Co., and the firms whom you have named as having loaned their acceptances to said company, concerning such loans and the notes of the company?

A. There was. When I drew a draft on them I notified them of it, and enclosed a note of the same date and amount, saying it was collateral for said draft or drafts. This was done, I think, in every instance.

Cr. int. 7. Produce the books and accounts of the company to which you have had reference, as you testified in your direct examination, and the correspondence with the firms named concerning the acceptances and notes.

(Counsel for the complainant disclaiming any desire to examine any portion of the books and accounts, or of the correspondence of the corporation, except such as the witness has testified to as having examined previous to and in preparing his answers to the direct interrogatories.)

(Witness produces the journal and the ledger of the company, and two accounts which he describes as stock-accounts of goods, dated December 31, 1852, and which are marked respectively "Exhibit B and Exhibit C. F. A. D., examiner." While waiting for the production of the other books and papers called for, the counsel for the complainant proceeds with the cross-examination, de bene.)

Cr. int. 8. Look at the statement marked Exhibit "V," annexed to your deposition formerly given in this case, and found on pages 300–302 of the printed record in this case, and designate the bills payable of the company which you say were given as collateral for the acceptances of drafts of the company by its agents.

A.	1852,	July	3.	Hoyt, Tillinghast & Co.,	6	months.	$5,000
	"	"	5.	Hacker, Lea & Co.,	6	"	5,000
	"	October	11.	Hacker, Lea & Co.,	6	"	5,000
	"	"	11.	Hoyt, Tillinghast & Co.,	6	mos....	5,000
602	"	Nov'ber	15.	Hacker, Lea & Co.,	6	mos....	5,000
	"	"	18.	Hoyt, Tillinghast & Co.,	6	"	5,000
	"	"	15.	Dodge, Tucker & Co.,	6	"	5,000
	"	Dec'ber	3.	Hoyt, Tillinghast & Co.,	6	"	5,000
	"	"	6.	Hacker, Lea & Co.,	6	"	5,000
	"	"	6.	Dodge, Tucker & Co.,	6	"	5,000
	"	"	13.	Hacker, Lea & Co.,	6	"	6,000
	"	"	22.	Hoyt, Tillinghast & Co.,	6	"	3,000
	"	"	23.	Dodge, Tucker & Co.,	6	"	6,000
	"	"	27.	Hoyt, Tillinghast & Co.,	6	"	5,000
	"	"	27.	Hacker, Lea & Co.,	6	"	6,000

Cr. int. 9. Please give the sum total.

A. $76,000.

Cr. int. 10. Had not the company received acceptances to a like amount from these several agents?

A. They had.

Cr. int. 11. How did you obtain the amounts for advances on goods as stated in Exhibit "A?"

A. By taking the amounts from the ledger which were due each party by their accounts in the ledger.

Cr. int. 12. Do these accounts in the ledger which you now refer to contain or represent the exact amount of the advances on goods by each of these agents?

A I understand them so to.

Cr. int. 13. Please observe the phrase in Exhibit "A," "Due agents for advances on goods $90,026.19;" and state whether that represents the exact amount of the advances made by these agents on goods consigned to them by the company.

A. It does, to the best of my knowledge and belief.

Cr. int. 14. After your company had consigned goods to an agent, and that agent had accepted a draft of your company, did you not enter upon your books that the company was indebted to the agent in the amount of that draft, and also credit the agent in his account with the same amount, before the draft was paid?

A. We did.

Cr. int. 15. Where do these acceptances of agents appear in this statement, Exhibit "A?"

A. They appear in the item "Due agents for advances on goods."

603 Cr. int. 16. Is that the total amount of acceptances of such agents which the company had received, and which were outstanding on the 31st of December, 1852?

A. It is the total amount, less the amount of sales rendered by said parties.

Cr. int. 17. Where are the accounts rendered by the agents of the company showing the amount of goods on hand, amount of sales and amount of acceptances?

A. At the city office.

(By request of counsel the witness goes out to obtain and produce the accounts referred to.)

Adjourned to September 26th, at 10 o'clock a. m.

Adjourned to September 27th, at 10 o'clock a. m.

SEPTEMBER 27, 10 o'clock a. m.

Present, for complainant, Messrs. Parsons and Jencks; for respondents, Mr. Payne.

The witness desires to make the following addition to his answer to cross-interrogatory 14: We did in this manner: When we drew a draft it was credited to the agent's account on our books, and in this way we became indebted to the agent for the amount of said draft.

The witness produces the following accounts which are respectively marked by the examiner as follows:

Exhibit "D, F. A. D., examiner." Account current of Hacker, Lea & Co., December 31, 1852.

"D^{I}." Account current of Dodge, Tucker & Co., Dec. 31, 1852.

"D^{II}." Account current of Hoyt & Tillinghast, Dec. 31, 1852.

"D^{III}." Account current of Day, Owen & Co., Dec. 24, 1852.

"E." Hoyt, Tillinghast & Co.'s account of goods on hand Dec. 31, 1852.

"E^{I}." Dodge, Tucker & Co.'s account of sales and goods on hand Dec. 31, 1852.

604 "Em." Day, Owen & Co.'s account of sales and goods on hand Nov. 16, 1852.

"Em." Hacker, Lea & Co.'s account of goods on hand, Dec. 31, 1852.

The witness also produces two books of letters received from August, 1851, to June, 1853; and a book of letters written by him as treasurer of the Atlantic De Laine Co., from October, 1851, to July 30, 1853; also the first bill-book of the company, the first cash-book of the company; also all the accounts current of the agents and their accounts of sales down to December, 1852, also the notes of the company, given as collateral for drafts, down to Dec. 31, 1852.

Cross-examination resumed by Mr. Jenckes:

Cr. int. 18. What books and accounts of the company did you examine previous to giving your answer to the 25th direct interrogatory, concerning notes of Hill, Carpenter & Co., outstanding Dec. 31, 1852, included in the statement Exhibit V, annexed to your former deposition?

A. I examined the ledger and journal of the company.

Cr. int. 19. Point out the entry upon the journal which relates to that transaction.

A. On page 108. It is as follows:

Nov. 24, 1852. Sundries to bills payable		$10,000 00
For amount our note six months from 3d inst., through Hill, Carpenter & Co., 8th inst.	$5,000 00	
For amount our note at six months from 7th inst., through Hill, Carpenter & Co., 8th inst.	5,000 00	
Interest for amount, per discount book,		301 67
Cash received, balance of discount		$9,698 33

Cr. int. 20. Is there any entry of those notes upon the ledger, except under the head of bills-payable?

A. No. It is on page 19 of "bills-payable," under date of Nov. 24, Journal A, page 108, $10,000.

605 Cr. int. 21. On what other books does an entry appear concerning those notes?

A. It appears on the discount-book, and also on the bill-book and on the cash-book.

Cr. int. 22. Is the consideration for each of the other bills-payable in said list correctly stated therein?

(The witness examines Schedule V, annexed to his former deposition.)

A. It is; with this exception: the notes to Hill, Carpenter & Co., dated Nov. 17th and 22d, 1852, were given for wool. The two notes given to Hill, Carpenter & Co., dated Nov. 3d and 7th, 1852, were not given for wool, as they are stated in the exhibit, but were given for the purpose I have just explained. The following notes given to the Globe Printing Co., were not for a loan, as stated in said exhibit, but were on account of printing done:

One note due May 20, 1853	$2,000 00
July 3, 1853	2,000 00
3, 1853	2,158 14
10, 1853	1,400 00
10, 1853	1,500 00

Cr. int. 23. Upon what book of the Atlantic De Laine Co., is the original

of the statement Exhibit A, annexed to your present deposition, to be found?

A. The items are to be found in the ledger, journal, bill-book, and the accounts which have been filed.

(Question repeated.)

The statement, as a whole, is not to be found on any book.

Cr. int. 24. Is there any statement, similar to said Exhibit A, of the condition of the company at any definite time previous to March, 1853, to be found on any of the books of the company?

A. I don't know of any.

Cr. int. 25. Where did this half sheet of paper, Exhibit A, come from?

A. It came from my private letter-book.

606 Cr. int. 26. Where is that letter-book?

A. It is out to the farm now.

Cr. int. 27. It was not taken from the book which you have produced here as the letter-book of the company?

A. It was not.

Cr. int. 28. Is the letter to Frieze, which you said accompanied this statement, in your possession?

A. It is not.

Cr. 29. Is a press-copy of it in your possession?

A. It is.

Cr. int. 30. Has the original ever been in your possession since it was handed to Mr. Frieze?

A. I think not.

Cr. int. 31. Does the letter-book, which you call your private letter-book, contain any other letter signed by you as treasurer of the Atlantic De Laine Co.?

A. I can't say.

Cr. int. 32. When was this half-sheet removed from your letter-book?

A. Last Wednesday, September 25th.

Cr. int. 32½. Were not the originals of Exhibit A, and the letter accompanying the same, prepared and sent by you to Frieze in reply to a formal demand upon you, as treasurer of the company, for a statement of its condition, standing, and accounts?

A. It was.

Cr. int. 33. On what day did you first advertise for sale the property of General James included in the mortgage to you as trustee?

A. I can't say. Upon referring to the bill and answer, it appears it was done on the 5th of February, 1853; and I have no doubt it was correctly stated.

Cr. int. 34. Isn't the demand of a statement from Frieze contained in the letter, a copy of which you annexed to your previous deposition, marked "Exhibit H," which letter bears date February 15, 1853?

Ans. It is.

Cr. int. 35. Is Exhibit J, annexed to that deposition, a copy of your letter sent to Frieze with the statement Exhibit A, as you now state?

Ans. It is.

607 Cr. int. 36. Between the 15th and the 26th of February, 1853, had not Frieze moved for and obtained an injunction from the supreme court of Rhode Island, staying the sale as to some portion of the property advertised?

A. He had.

Cr. int. 37. As to what portion?

A. As to General James' interest in the De Laine Mill.

Cr. int. 38. Between the dates above named, had not the Narragansett Brick Company obtained an injunction against you, from the supreme court of Rhode Island, staying the sale of other portions of the property advertised by you to be sold under the mortgage?

A. I don't recollect.

Cr. int. 39. Do you recollect the proceedings of the Narragansett Brick Company to procure an injunction?

A. I do.

Cr. int. 40. Were not these proceedings commenced between the dates referred to?

A. I think they were.

Cr. int. 41. Where was General James at that time?

A. I think he was in Washington.

Cr. int. 42. Was he not then a member of the Senate of the United States?

A. He was.

Cr. int. 43. Did the negotiations with Frieze, as assignee of James, for a settlement of the matters between the company, James, and himself, commence on or after the 26th of February, 1853?

A. It was a day or two after that date.

Cr. int. 44. Did you not come to an understanding about the general features of the proposed settlement on the first or second day of March following?

A. We did.

Cr. int. 45. Had you made out and sent to the directors, or to either of them, a statement of the condition of the company, on or about the first of January, 1853?

A. I can't say now. I have no recollection of it.

Cr. int. 46. If you had done so, would it not have appeared in the letter-book of the company, which you have produced?

A. I don't think it would.

608 Cr. int. 47. Have you any recollection of having made out any such statement, either to be sent to the directors or for any other purpose, prior to the making of the statement which you have produced as Exhibit A?

A. I have not.

Cr. int. 48. When you gave your former deposition in this cause, did you not state, in answer to the 32d direct interrogatory, among other things, that "The statement furnished the assignee was a true copy of the books, January 1, 1853?"

A. On referring to the printed copy, I find that I did so state.

Cr. int. 49. In answer to the 25th direct interrogatory, in said deposition, did you not state, among other things, that, "When the injunction was granted, I sent him (meaning Frieze) a statement in writing, in substance and form the same as I was accustomed to send annually to the directors?"

A. On referring to the printed copy, I notice that I did.

Cr. int. 50. Is there anything in the statement Exhibit A which indicates or conveys the idea that seventy-six thousand dollars in amount of what is set down as bills payable, was accommodation paper created by an exchange of the company's notes for the acceptances of the company's agents?

A. There is not.

Cr. int. 51. Was not this class of drafts made by your company as

drawers upon the agents as drawees, payable to your or the company's order?

A. I think they were.

Cr. int. 52. Were not the collateral notes signed by yourself as treasurer of the company payable directly to these agents?

A. They were.

Cr. int. 53. At or about what time did this exchange of paper commence?

A. The first instance which I find was a draft on Hacker, Lea & Company, drawn in October, 1851, for $2,244.80; for which a collateral note was sent them.

Cr. int. 54. Is not the whole, or by far the greater portion, of this class of paper which was outstanding on the 31st of December, 1852, renewal of similar paper which was made between the parties in the month of November, 1851?

609 A. I think it was.

Cr. int. 55. Refer to the pages of the journal which contain the entries of the amount of paper thus made in the month of November, 1851, and state the amount as between the company and each of these agents.

A. On pages 22 and 23, I find the amount drawn on Hoyt & Tillinghast was $54,500. The amount drawn on Dodge, Tucker & Co., $35,000. And the amount drawn on Hacker, Lea & Co., $51,500. Total, $141,000. For which collateral notes were given, as stated on page 23.

Cr. int. 56. Do I understand you correctly as stating in your answers to direct interrogatories, that none of these drafts or notes appear in the ledger-accounts with these agents, upon the books of the company?

(The witness refers to his answer to the 21st direct interrogatory, and says:)

A. I don't know that I stated that in my direct examination, but the fact is, that they do appear on the said ledger-accounts.

Cr. int. 57. What do you mean, then, by your statement in your answer to the 21st direct interrogatory, "That these transactions were independent of drafts drawn and accepted for advances on goods shipped to such parties, as appears by the books?"

A. I mean that they were considered as separate transactions from drafts drawn on goods.

Cr. int. 58. Do the books show any difference between these two classes of transactions?

A. Yes; they show that notes were given for all such drafts.

Cr. int. 59. Do the books show anything more than that such drafts were drawn on the agents, and that notes were given to these agents?

A. The letter-book shows that the notes were sent and received. That is all else.

Cr. int. 60. Is there anything upon the journal or ledger of the company to show that the notes were given as collateral to the drafts, or that the drafts were given in exchange for notes?

610 A. Yes; the journal says in every instance when a note is entered, that it was given as collateral for a certain draft.

Cr. int. 61. Give a specimen of one of those entries upon the journal.

A. I refer to the first note given, on page 14 of the journal, dated October 14, 1851: "Hacker, Lea & Co., to bills payable, $2,244.80, for our note at six months from 23d inst., sent them as collateral of our draft on them this date, $2,244.80."

Cr. int. 62. In November, 1851, what portion of the mill was in operation?

A. I think only the cassimere department.

Cr. int. 63. Who had charge of this department?

A. Mr. Joseph Carpenter, of the firm of Hill, Carpenter & Co.

Cr. int. 64. Had he or they been authorized to buy wool for the company?

A. Hill, Carpenter & Co. had been authorized to buy wool.

Cr. int. 65. Had they purchased a large amount previous to November, 1851?

A. They had.

Cr. int. 66. Was it to meet the notes given for these purchases of wool that a large sum was required to be raised by the company in November, 1851?

A. It was.

Cr. int. 67. Was the money raised for this purpose on the acceptances which you have referred to as being entered on pages 22 and 23 of the journal?

A. It was.

Cr. int. 68. What firms were owners of the stock of the company at that time?

A. Hill, Carpenter & Co., Hoyt & Tillinghast, Hacker, Lea & Co., Dodge, Tucker & Co., Globe Printing Co., Day, Owen & Co.

Cr. int. 69. Were the Globe Printing Co. to have the privilege of printing the goods that were made by the company?

A. They were.

Cr. int. 70. Was not the firm of Hill, Carpenter & Co. at that time dealers in wool to a very large amount in this market?

A. They were.

611 Cr. int. 71. Were not the four other firms to be the selling-agents of the company, one in Boston, one in Hartford, one in New York, and one in Philadelphia?

A. They were.

Cr. int. 72. Was it not agreed between these firms, at the time these drafts were drawn, in November, 1851, that a portion of the collateral notes should be endorsed by the Globe Printing Co., and a portion by Hill, Carpenter & Co.?

A. It was.

Cr. int. 73. What amount was so endorsed and how were they distributed between the three firms who became acceptors upon these drafts?

A. The amount endorsed by Hill, Carpenter & Co. was $52,000. The amount endorsed by the Globe Printing Co. was $41,750. Total, $93,750; of which $34,000 was received by Hoyt & Tillinghast; of which $34,000, $11,500 was endorsed by the Globe Printing Co., and $22,500 by Hill, Carpenter & Co. Hacker, Lea & Co. received $35,000; of which $20,000 was endorsed by Hill, Carpenter & Co., and $14,000 by the Globe Printing Co. Dodge, Tucker & Co. received $25,750; of which the Globe Printing Co. endorsed $16,250, and Hill, Carpenter & Co., $9,500.

Cr. int. 74. Was it not understood and expected, at the time of this transaction, that the acceptances should be paid out of the proceeds of the sales of goods manufactured, and to be manufactured, at the mill, and that the paper should be renewed from time to time until the proceeds of such sales should be sufficient to pay the whole of them?

A. My impression is that at that time it was believed that by the time

those notes matured, the company would be in funds, from the products of the mill, sufficient to pay said notes.

Cr. int. 75. Were not a portion of these notes paid from the proceeds of the product of the mill, when they fell due?

A. They were.

Cr. int. 76. Were not new drafts drawn for the remainder when they fell due, and new collateral notes given to the acceptors?

A. They were.

Cr. int. 77. Was not this class of paper paid from time to time out of the proceeds of the product of the mill, until it was finally wholly retired?

A. Yes.

612 Cr. int. 78. State what amount of this paper was paid when it came round in May or June, 1852.

A. I think about ninety thousand dollars of it.

Cr. int. 79. In the year 1852 were not these acceptances discounted as a less rate than six per cent. per annum?

A. Some of them were.

Cr. int. 80. In the latter half of the year 1852, were not some of them, to your knowledge, below five per cent. per annum?

A. They were.

Cr. int. 81. What are the items which make up the $90,026.19 in Schedule A, described as "due agents for advances on goods?"

A. The items are, the balances due the agents on that date, as shown on the ledger of the company, which corresponds with their account current as shown in Exhibit W, attached to my former deposition.

Cr. int. 82. Does the account current of Hacker, Lea & Co., Exhibit D, on the 31st December, 1852, show the items of the amount $31,296.37, said to be due them?

A. It does not.

Cr. int. 84. Does it show that amount as due them?

A. It does not.

Cr. int. 85. What amount does it show as due them?

A. $27,796.37.

Cr. int. 86. How does said account current show that the balance therein stated was ascertained?

A. By charging the company the amount due them September 30th, and with all acceptances of their drafts drawn on goods and sundry allowances on sales, and crediting the amount of sales made for the company, and charging and crediting interest.

I wish to correct my answer to cross-interrogatory 81, by saying that the books correspond with the accounts current of all the agents, except that of Hacker, Lea & Co.; a draft having been drawn on them on the 29th of December, for $3,500, which was credited to them on December 29th, on our journal, page 114, but which had not been presented to them for acceptance on the 31st of December. Their

613 account shows due them, $27,796.37. By adding this draft of $3,500, the amount will correspond with the balance on their books, $31,296.37.

Cr. int 87. Does this draft appear to have been entered on your journal prior to December 31, 1852?

A. Yes; it was entered under date of December 29th, on page 114.

Cr. int. 88. Please annex copies of both entries, that of December 29th and that of December 31st?

A. They are as follows:

WEDNESDAY, *December 29th*, 1852.

Bills receivable to Hacker, Lea & Co		$3,500 00
For amount our draft at six months from date	$3,500 00	

FRIDAY, *December 31st*, 1852.

Hacker, Lea & Co., to sundries		$44,665 19
Cassimere account, for amount their account sales to date, due July 28, 1853		5,128 40
De laine account, for amount their account sales debaiges to date, due August 1, 1853.	$2,225 42	
For 70 per cent. their account sales de laines, to date, due July 11	6,015 00	
		8,240 42
Hacker, Lea & Co., new account, for amount our draft, Nov. 29, six months, carried forward	3,500 00	
For amount balance their account transferred, due this date	27,796 37	
		31,296 37

Cr. int. 89. Do these accounts current rendered by these agents purport to be copies of their books?

A. I suppose them to be so.

Cr. int. 90. Have you examined all the accounts current with your agents, rendered by them to you prior to the 31st of December, 1852, and can you say that their acceptances, for which collateral notes were given, and the collateral notes themselves, do not appear in any of these accounts current, except that of Dodge, Tucker & Co.?

614 A. I have examined only those of December 31st, 1862. I can't say whether they do or not. (The witness makes the examination referred to.) I have now examined the previous accounts current, and find only one instance, which was in the case of Hacker, Lea & Co., where they charge two drafts of $1,500 each, to which their attention was called on receipt of their account current, by letter, dated August 2, 1852; their reply to which acknowledged it to be an error.

Cr. int. 91. Would you make upon your books any statement of the amount due agents until you received their accounts current, showing their receipts and expenditures in the business of the company?

A. It has not been our practice.

Cr. int. 92. Were they not accustomed to charge their acceptances as soon as they accepted the drafts, and not to credit the company for goods until the goods were sold?

A. Yes.

Cr. int. 93. Of what items is the sum of $51,404.44, "due various persons on account," made up?

A. It is made up of the items in Exhibit X, annexed to my former deposition in this case.

Cr. int. 94. What is the meaning of the entry, "George W. Chapin, trustee, funds received and not distributed?"

A. They were funds in my hands, as trustee, which I had deposited with the company.

Cr. int. 95. What do you mean by the phrase, "deposited with the company?"

A. I mean I had loaned them to the company.

Cr. int. 96. Where does that transaction appear on the books of the company?

A. It appears on the ledger, page 71.

Cr. int. 97. Where on the journal?

A. On pages 56, 92, 138, and on pages 98, 118, 137, 139, and 143.

Cr. int. 98. State generally whose funds those were, and from what source derived.

A. They were funds which belonged to the beneficiaries under the mortgages made to me as trustee. They were derived principally from the sale of the Chopequansett farm and the stock upon it.

615 Cr. int. 99. Do you refer to the mortgage executed by James?

Ans. I do.

Cr. int. 100. Where is the account of Hill, Carpenter & Company, which is one of the items of Exhibit A?

A. I now hand it to you.

Cr. int. 101. Does that include the wool account as well as other matters between Hill, Carpenter & Company and the company?

Ans. It does.

Cr. int. 102. What are the items of the first entry on the credit side of Exhibit A?

A. They are items embraced in Exhibit Z, annexed to my former deposition in this case.

Cr. int. 103. Look at the account under the head of "bills receivable" on the company's ledger, and state what the balance appears to have been on the 31st day of December, 1852.

A. $8,257.96.

Cr. int. 104. Isn't that the balance of an account containing a large number of entries?

A. It is.

Cr. int. 105. What are the items which constitute the second entry on the creditor side of said statement, Exhibit A?

A. They are the items mentioned in Exhibit Z continued, annexed to my former deposition.

Cr. int. 106. Does the item in Exhibit Z continued, now referred to, which reads, "cost of cassimere department, which is included in the construction account, to December 31, 1852, and marked V, $40,250.33," contain all that has been expended by the company upon the cassimere department down to the date mentioned in the entry?

A. I so understand it.

Cr. int. 107. Do you know, of your own knowledge, whether it does or not?

A. I think I do, and that it does contain all that had been expended upon that department down to that time.

Cr. int. 108. Wasn't that department entirely distinct from anything that was embraced in what you call "James's contract account?"

A. It was.

616 Cr. int. 109. What portion of the account which you call "James's contract account" in Z continued, referred to as Exhibit B annexed to your former deposition, was paid to James, and what to other persons?

A. $213,000 of it was paid to James; that is, the items down to and including that of July 2d; and $20,862.03 was paid to other parties.

Cr. int. 110. How did you obtain the figures of the item in Exhibit Z continued, as follows: "Amount paid C. T. James's contract-account, the account being marked 'B,' in which exhibit the items are contained, $256,615.11?"

A. I obtained them from the books of the company. It was the balance of the account on the ledger on that date.

Cr. int. 111. What amount had James expended in the performance of his contract in addition to the sums paid by your company, as set out in Exhibit O, annexed to your former deposition?

A. I don't know.

Cr. int. 112. Do you not know that he claimed that he had expended a larger sum than $260,000?

A. I have heard so.

Cr. int. 113. Did you not hear so at or about the time the instrument marked "Exhibit G," annexed to your former deposition, was executed?

A. I can't say that I did.

Cr. int. 114. Did you not hear it claimed by James, or some one in his behalf, during the year 1852, or prior to March, 1853, that he (James) had expended of his own money about $320,000, or upwards of $300,000, in the execution of this contract?

A. I can't say that I did.

Cr. int. 115. You have heard of such claim at some time.

A. Yes. I think I first heard of it in 1856.

Cr. int. 116. Can you be positive that you did not hear of it before 1856?

A. No.

Cr. int. 117. The figures which you gave in "Exhibit Z, continued," as to the amount paid James's contract-account, were given, were
617 they not, without any reference to the actual cost or value of the mill, but simply as amounts paid on that contract?

A. Yes.

Cr. int. 118. Did you make the charges of the items of the account Exhibit B, annexed to your former deposition, following the entry of July 2, 1851, by the direction of James, or from your own idea that these sums should be charged to the contract-account?

A. From my own idea that these sums should be charged to the contract-account.

Cr. int. 119. Were any sums loaned directly from your company to Frieze, assignee, for the purpose of enabling him to complete the James contract?

A. Yes.

Cr. int. 120. Where do they appear in the account?

A. They appear in the Exhibit AA, annexed to my former deposition.

Cr. int. 121. I mean loaned directly to him.

A. I don't recollect of any other than those embraced in the items of Exhibit AA.

Cr. int. 122. Were not all the items in the Exhibit AA for labor and materials upon the Atlantic De Laine property?

A. They were.

Cr. int. 123. Do you know what amounts were paid by Frieze towards the completion of said contract which he derived from other sources?

A. I know that Frieze settled a claim of William Mason & Co. for machinery for the mill, somewhere about $60,000, out of the proceeds of General James's estate, with the exception of $6,550, which we paid William Mason & Co. for Frieze.

Cr. int. 124. Do not the books of the company show what amount of wool, cotton, and supplies was sent to the mill prior to December 31, 1852?

A. They do.

Cr. int. 125. Give the balance of the cotton-account at the mill on the 31st December, 1852.

A. $3,642.98.

Cr. int. 126. Give also the balance of the wool-account at the mill on the same date.

A. $147,823.96.

618 Cr. int. 127. Give also the mill-account for supplies for the same date.

A. $9,364.40.

Cr. int. 128. Give also the balance of the cassimere-account of the same date.

A. $12,680.23.

Cr. int. 129. Give also the balance of the de laine account of the same date.

A. $237,062.

Cr. int. 130. What kind of goods does the de laine account include?

A. It includes all goods that were manufactured by us, except cassimeres.

Cr. int. 131. How was this balance of $3,642.98 of the cotton-account obtained?

A. It was the value of the cotton on hand at that date.

Cr. int. 132. The balance of the mill-account and the wool-account also express the same result?

A. Yes, sir.

Cr. int. 133. What does the balance of the cassimere-account express?

A. It expresses the cost of the cassimeres made to that date, less what had been sold, and the amounts received for said sale.

Cr. int. 134. What does the balance of the de laine-account express?

A. It expresses the cost of the de laines made to that date, less what had heen sold, and the amounts received for said sales.

Cr. int. 135. Does the mill-account include the amount paid for labor at the mill?

A. It does.

Cr. int. 136. Is there upon the books any separate account of de laine stock from that general wool-account?

A. No; that is included in the balance of delaine-account.

Cr. int. 137. At what stage in the process of manufacture or in your business do the wool, cotton, and supply accounts end, and the de laine and cassimere accounts begin?

A. When they are put into use for manufacture into the mill.

619 Cr. int. 137½. Is the statement upon the paper marked "Exhibit B, F. A. D., examiner," to be found upon any of the books of the company in the form in which it appears in said exhibit?

A. It is not.

Cr. int. 138. Was it ever recorded, to your knowledge, in any of the books of the company?

A. I do not think that it was.

Cr. int. 139. Has it ever been produced in any previous examination?

A. I do not recollect that it has.

Cr. int. 140. In the paper Exhibit B, F. A. D., examiner, the amount of goods on hand Dec. 31, 1852, in the hands of Day, Owen & Co., appears to be thirty-six cases, 48,872 yards. In their account produced in this examination, marked E", the amount of de laines on hand is stated at forty-seven cases, 64,934 yards. Which is correct?

A. The statement E". The eleven cases on the right hand having been omitted in adding, when this account, Exhibit B, was drawn off.

Cr. int. 141. In whose handwriting are the figures in the lower right-hand corner of account Exhibit E ?

A. In my own.

Cr. int. 142. In whose handwriting is Exhibit B ?

A. It is my own.

Cr. int. 143. If the statement in Exhibit A was prepared from Exhibit B, the error has also entered into Exhibit A, has it not ?

A. It has.

Cr. int. 144. In whose handwriting is the paper, Exhibit C, F. A. D., examiner ?

A. My own.

Cr. int. 145. Do the items on Exhibit C appear in the same form as a statement upon any of the books of the company ?

A. They do not, to my knowledge.

Cr. int. 146. Has this paper ever been produced at any previous examination of witnesses in this cause ?

A. It has not.

Cr. int. 147. Are these two papers, Exhibits B and C, F. A.
620 D., examiner, part of the papers which you refer to as accounts in your direct examination ?

A. They are.

Cr. int. 148. In whose possession have these papers been ?

A. In possession of the company. I found them among some old accounts.

Cr. int. 149. When did you find them ?

A. Years ago.

Cr. int. 150. How long since you have known of their existence ?

A. I can't state the number of years.

Cr. int. 151. Did you have knowledge of their existence when you gave your former deposition in this cause ?

A. I presume I did.

Cr. int. 152. Do you mean to be understood as saying that you had then actual knowledge and present memory of the existence of these papers and of their contents ?

A. I can't say whether I did or not.

Cr. int. 153. Do you remember of having submitted them to your counsel at any time previous to or during your former examination as a witness ?

A. I do not.

Cr. int. 154. When do you first remember of having submitted them to your counsel ?

A. A few days ago.

Cr. int. 155. Did you personally take any account of stock at the mill in December, 1852, or January, 1853 ?

A. I did not.

Cr. int. 156. Is there any book of the company from which you derive the figures 22,306.26 following the words, "De laine stock at mill ?"

A. I can't say whether there is or not. We have not been able to find any.

Cr. int. 157. Is there any book of the company from which you derive any of the figures following and below that item of this statement ?

A. I can't say whether there is or not. We have not been able to find any.

Cr. int. 158. What is the last item, in pencil, in this list ?

A. Furniture, including office and boarding-house furniture.

621 Cr. int. 159. When were the figures which represent the sum total of these items beneath the column made upon this paper ?

A. To the best of my knowledge, about the time the paper was written.

Cr. int. 160. When were the figures in pencil and ink below this sum total made?

A. To the best of my knowledge, when my other deposition was being prepared.

Cr. int. 161. When were the figures on the other side of this paper made?

A. To the best of my knowledge, about Dec. 31, 1853.

Cr. int. 162. Then they have no reference to the words and figures marked "Exhibit C?"

A. No.

Cr. int. 163. Do not the first two items of Exhibit C correspond with the balances upon the books of the company?

A. They do.

Cr. int. 164. Have you any actual personal knowledge as to how the other figures upon this paper, Exhibit C, were obtained?

A. I have not. I have no doubt whatever said figures were taken from the inventory made at the mill on the 31st of Dec., 1852.

Cr. int. 165. Where is that inventory-book, if there be such a book?

A. We have not been able to find it.

Cr. int. 166. If there was such a book, it was made by somebody besides yourself, was it not?

A. It was.

Cr. int. 167. Who was then in charge of the mill?

A. I think that Mr. R. P. Silver was superintendent.

Cr. int. 168. Who was the book-keeper?

A. George F. Wilson.

Cr. int. 169. Do you mean George F. Wilson, resident of East Providence?

A. I do.

Cr. int. 170. Is there any profit and loss account upon the books of the company for the years 1851, 1852, and 1853?

A. There is not.

622 Cr. int. 171. When does the profit and loss account upon the books commence?

A. March 31, 1854.

Cr. int. 172. The item in Exhibit A called "balance" is not the balance of any profit and loss account, then, that appears upon the books?

A. It is not.

Cr. int. 173. Are you confident that the figures in the lower part of the page, Exhibit C, were made at the time of your said examination?

A. Quite so.

Cr. int. 174. Then you had this paper in your possession when you were formerly examined as a witness in this cause? Do you mean to be so understood?

A. I think I did.

Cr. int. 175. Did you then have in your possession the paper Exhibit B?

A. I think so.

Cr. int. 176. Who were the original subscribers to the stock of the Atlantic De Laine Company, and how many shares of stock were subscribed for by each?

A. Charles T. James; Hill, Carpenter & Co.; Hoyt and Tillinghast;

Hacker, Lea & Co.; Dodge Tucker & Co.; the Globe Printing Co.; Harrison & Co.; Day, Owen & Co. Charles T. James subscribed for one hundred and fifty shares; Hill, Carpenter & Co. for thirty shares; Hoyt & Tillinghast for twenty-five shares; Hacker, Lea & Co. for twenty-five shares; the Globe Printing Company for twenty-five shares; Dodge, Tucker & Co. for fifteen shares; Harrison & Co. for ten shares, and Day, Owen & Co. for three shares.

Cr. int. 177. When were certificates of stock first issued, and to whom were they issued?

A. In January, 1854. To Hoyt, Tillinghast & Co., twenty-five shares; Hacker, Lea & Co., twenty-five shares; Globe Printing Co., twenty-five shares; Hill, Carpenter & Co., thirty shares; Dodge, Tucker & Co., fifteen shares; Day, Owen & Co., three shares; Atlantic De Laine Company, special stock and mortgage account, one hundred and thirteen shares.

Cr. int. 178. Will you state, from the books of the company, the
623 history of the several shares of stock subscribed for, or for which certificates were issued, from the time of the organization of the company, and from the issue of the certificates to the date of the decree?

A. The twenty-five shares of Hoyt & Tillinghast and the twenty-five shares of the Globe Printing Company are still owned by their successors. The twenty-five shares of Hacker, Lea & Co. were transferred by them to the company, in November, 1859. In October, 1861, nineteen of them were transferred to Hoyt & Tillinghast, and Hoyt, Spragues & Co., and are still owned by their successors. At the same time the other six shares were transferred to Josiah Chapin, and are now owned by him. The thirty shares of Hill, Carpenter & Co. were bought by George W. Chapin, at auction. Twenty-two of them are still owned by him; eight are owned by William B. Greene. The fifteen shares of Dodge, Tucker & Co. were transferred by their successors to the company in December, 1862. In June, 1864, they were transferred to George W. Chapin, who still owns them. The three shares of Day, Owen & Co. were transferred by them to the company in July, 1855, and by them to Hoyt, Tillinghast & Co., in October, 1861. They are now owned by Nehemiah Knight, of that firm. The one hundred and thirteen shares issued to the Atlantic De Laine Company, special stock and mortgage account, were the one hundred and thirteen shares transferred by L. B. Frieze, March 9, 1853, to the Atlantic De Laine Company and George W. Chapin, trustee. The fifty-seven shares belonging to the trustee were transferred in March, 1855, as follows:

To Hill, Carpenter & Co., fourteen shares; to the Globe Printing Company, twelve shares; to Hoyt, Tillinghast & Co., twelve shares; to Hacker, Lea & Co., twelve shares; to Dodge, Tucker & Co., seven shares. The other fifty-six shares were at the same time issued to the company. The fourteen shares of Hill, Carpenter & Co. were transferred by their attorney to the company in May, 1861. In June, 1864, they were transferred to George W. Chapin and Edwin Hoyt, and are now owned by said Hoyt and Nehemiah Knight. The twelve shares of Hoyt, Tillinghast & Co. and the twelve shares of the Globe Printing Co. are still owned by their successors. Of the seven shares of Dodge, Tucker & Co., four are now owned by their successor, A. Tucker. The other three were transferred to George W.
624 Chapin in December, 1862, who now owns them. The twelve shares of Hacker, Lea & Co. were transferred to the company in November, 1859. In October, 1861, they were transferred to Dodge, Tucker & Co., Dodge, Newton & Mills, and the Globe Printing Co. In

December, 1862, seven of them were transferred to the company, who transferred them, in June, 1864, to E. Hoyt, who now owns them. The other five are owned by A. Tucker and George W. Chapin. The fifty-six shares issued to the company as above were transferred, in October, 1861, to Hoyt, Tillinghast & Co. and the Globe Printing Co., and are still owned by their successors. One share of stock was purchased of the company in 1852 by N. P. Bartlett, who transferred it back to them in August, 1853. They transferred it to A. Tucker, jr., in December, 1862, who still owns it. Of the three hundred shares of the capital stock, sixty-three remained unissued until October, 1861, when they were issued as follows:

Four shares to Josiah Chapin, who still owns them. Sixteen shares to the Globe Printing Co., which were transferred to William C. Chapin, and by him to the company in December, 1862, who in June, 1864, transferred them to the Globe Printing Co., Nehemiah Knight, Josiah Chapin, and A. Tucker, who still own them. Forty-two shares were issued to George W. Chapin, who still owns them. One share was issued to Lewis Mills, and transferred in June, 1863, to A. Tucker, who still owns it.

Cr. int. 179. How many shares of the stock are now outstanding for which certificates of stock have been issued, and by whom were such shares of stock held on the 31st of December, 1867?

A. Three hundred; Edwin Hoyt, eighty-seven shares; William B. Greene, thirty shares; Nehemiah Knight, thirty-four shares; George W. Chapin, one hundred and two; William C. Chapin, twenty-three; A. Tucker, twelve; Josiah Chapin, twelve.

Cr. int. 180. When did the Atlantic De Laine Company organize under its charter; and will you annex to your deposition a copy of the record of such meeting at which said company was organized?

625 A. May 22, 1851. I annex a copy of the records of that meeting.

(Marked "Exhibit I. F. A. D., examiner.")

Cr. int. 181. Was the amount of the capital stock of said company ever at any time increased? If so, state when.

A. It was not.

Cr. int. 182. Do I understand from you, then, that the capital stock of the Atlantic De Laine Company is now, and has always been, $300,000, and that the same has never been increased or changed?

A. The capital stock is three hundred thousand dollars, and has never been more or less.

Cr. int. 183. Will you annex, as exhibits to your deposition, a copy of the by-laws of the Atlantic De Laine Company?

A. I will, and do.

(Marked "Exhibit J. F. A. D., examiner.")

Cr. int. 184. Will you state by what authority the Atlantic De Laine Company assumed the right to issue one hundred and thirteen shares as the stock originally subscribed for by Charles T. James, on special stock and mortgage account, as you have stated?

A. They were transferred to the company and George W. Chapin, trustee, by Lyman B. Frieze, assignee of Charles T. James.

Cr. int. 185. Were they or not transferred, and did they or not come into the hands, possession, or control of said company, under and by virtue of certain instruments of release and settlement, dated March 2, 1853, and referred to in the decree in this suit referring the case to the master as marked, respectively, "C" and "D," and which appear on pages 28, 29, 30, and 31 of the printed record in this suit, the same being so described in the decree which was filed November 25, 1867?

A. They were transferred to them by Mr. Freize on the transfer-book of the company.

Cr. int. 186. Were or not said shares of stock so transferred by Frieze, assignee of Charles T. James, at or about the time and in con-
626 sequence of the execution of the instruments of release and settlement, dated March 2, 1853, referred to in the decree?

A. They were.

Cr. int. 187. Had any certificates of stock been issued to Charles T. James, or L. B. Frieze, assignee of Charles T. James, at the time of said alleged transfer?

A. There had not been.

Cr. int. 188. How did the company become possessed of one hundred and eighty-six shares, and how were they divided?

A. The company became possessed of the one hundred and eighty-six shares, which were divided among the following named persons, as follows: Fifty-six shares were received from L. B. Frieze, March, 1853; one share was transferred by N. P. Bartlett, August, 1853; three shares were transferred by Day, Owen & Co., July, 1855; thirty-seven shares were transferred by Hacker, Lea & Co., November, 1859; five shares were transferred by Lewis Mills, April, 1860; seven shares were transferred by P. Tillinghast, May, 1861; fourteen shares were transferred by attorney of Hill, Carpenter & Co., June, 1861; sixty-three shares were shares which had not been previously issued, and which made up the stock account to three hundred shares.

Cr. int. 189. You state that fifty-six shares held by L. B. Frieze, assignee, were by him transferred to the company. It appears from Exhibit V, in the original record, that he transferred to the company one hundred and thirteen shares. What became of the other fifty-seven which he transferred to the company?

A. They were divided among the parties of whom George W. Chapin was trustee.

Cr. int. 190. Do the records of the company show that those fifty-seven shares were divided among the several parties after they had been transferred to the company by Frieze?

A. They do.

Cr. int. 191. Will you obtain from the books a statement of the precise manner in which these fifty-seven shares were divided?

A. I will. Hill, Carpenter & Co. received fourteen shares; Globe Printing Company, twelve; Hacker, Lea & Co., twelve; Hoyt, Tillinghast & Co., twelve; Dodge, Tucker & Co., seven.

Adjourned to Nov. 28, at 10 a. m.

627 NOVEMBER 28.

Examination of George W. Chapin resumed:

Cr. int. 192. Look at the file of the Providence Journal for the first half of the year 1853, now shown you, and at the following advertisements therein in the paper of February 5, 1853, and state whether you authorized the insertion of said advertisements, and also state on what days the same were published in said Providence Journal, and when they severally ceased to be published:

"By J. A. D. Joslin, (successor to A. B. Dike,) office, No. 5 Washington Buildings.

"*Trustees' sale.*

"Will be sold by public auction, on Friday, the 25th day of February, A. D. 1853, at 12 o'clock m., on the premises, by virtue of a power of

sale contained in a certain deed of mortgage made and executed by Charles T. James, August first, A. D. 1851, and recorded in the land-records of the town of Scituate, in book 19, pages 228 and 229:

"All and singular three certain lots, tracts, or parcels of land, with all the buildings and improvements thereon, situate in the town of Scituate, in the county of Providence, described, referred to, and conveyed in and by two certain deeds to the said Charles T. James, the one from Albert W. Harris, bearing date March 19, A. D. 1850, on record in the town clerk's office for said Scituate, in book No. 20 of the records of deeds, page 50; and the other from Syrell Cornell, bearing date June 16, 1851, also on record in said office, in book No. 21 of the records of deeds, page 75. Reference to said records may be had for a more particular description of said land, known as the Harley Phillips Tavern estate. Also, the stock (if any) remaining on said premises.

"By order of trustees. f. 5."

"*Trustees' sale.*

"Will be sold by public auction, on Saturday, the 26th day of February, A. D. 1853, at 12 o'clock m., on the premises, by virtue of a power of sale contained in a certain deed of mortgage made and executed by Charles T. James the first day of August, A. D. 1851, and recorded in the land-records of the city of Providence, in book 125, page 284:

"A certain tract or parcel of land, with the mansion-house and other buildings and improvements thereon, situate in the westerly part of said city of Providence, and bounded and described as follows, viz: Commencing at the corner of High and Harkness streets; thence running northerly, bounding westerly on said Harkness street, three hun-
628 dred and fifty-eight feet, more or less, to the northwest corner of lot No. 97, on a plat of the Almy estate; thence running easterly two hundred and ninety feet, more or less, to the northwest corner of lot No. 105, on said Almy plat; thence running southerly three hundred and fifty-eight feet, more or less, to said High street; thence running westerly on said High street, 290 feet, to the first corner or place of beginning.

"Also, 17 other lots of land, situate in the westerly part of said city of Providence, viz, lots numbers 88, 89, 90, 91, 92, 93, 94, 95, 96, 105, 106, 107, 108, 109, 110, 111, 112, on a plat of the Almy estate, on record in the city clerk's office in said Providence in Book of Plats No. 2, page 13.

"Also, lots 73, 74, and 83, on the aforenamed plat.

"Also, immediately after the above sale, will be sold all the stock which has not been heretofore sold which was mortgaged by the said Charles T. James by deed dated August 1, 1851, and recorded in the land-records of the town of Warwick, in Book of Mortgages of Personal Estate No. 2, pages 330, 331, and 332.

"By order of trustees. f. 5."

"*Trustees' sale.*

"Will be sold by public auction, on Saturday, the 26th day of February, A. D. 1853, at one o'clock p. m., on the premises, by virtue of a certain deed of mortgage made and executed by Charles T. James on the first day of August, A. D. 1851, and recorded in the land-records of North Providence, in book 17, page 108.

"All the right, title, and interest that the said Charles T. James on

the day of the date of said mortgage had in and to the capital stock of the Atlantic De Laine Company, a corporation incorporated by the general assembly of the State of Rhode Island, and in and to all the real and personal estate of said corporation, whether the same be held by said corporation or by any person or persons in trust for them, and in and to all the real estate situate in the town of North Providence.

"By order of the trustees. f. 5."

A. I have looked at said file. I did authorize the insertion of said advertisements as trustee. They appear to be continued from day to day until and including the paper of February 25, 1853. In the paper of February 26, 1853, the advertisement of the Scituate farm is dropped, and those of the homestead estate and James's interest in the company are continued, the latter with the following addition: "The above sale is postponed to Saturday, March 5, at the same time and place." In the paper of February 25th, the advertisement of the homestead estate does not appear. The advertisement of James's interest in the stock of the company does appear on February 28th, and is con-
629 tinued from day to day until March 4th, and does not appear in the paper of March 5, when it appears to have been dropped.

Cr. int. 193. Did you hold a separate mortgage upon each piece of property for the security of the same debt?

A. I did.

Cr. int. 194. When was the Chopequansett or Warwick farm sold, and in what manner?

A. I received the money, as mortgagee and trustee, in August, 1852. It was sold by agreement, and not under the power in the mortgage.

Cr. int. 195. Do you remember that Mr. Nathaniel F. Potter called upon you while these advertisements were being published from day to day, and tendered you the amount of the mortgage debt, and requested you to assign the mortgages to him or to the company of which he was the representative?

A. I recollect the tender by Mr. Potter, while the property was being advertised, of a certified check for a certain amount, which amount I do not recollect. He requested me to assign the mortgages to him, as I recollect.

Cr. int. 196. Did you decline to receive the money, and to assign the mortgages?

A. I did.

Cr. int. 197. What is your recollection now of the amount of that certified check?

A. About $50,000.

Cr. int. 198. Look at the statement Exhibit T, annexed to your former deposition, and state, if you can, from that statement, the amount of said mortgage debt on the 23d day of February, 1853.

A. About $52,000.

Cr. int. 199. Didn't Mr. Potter, or the Narragansett Brick Company, of which he was a stockholder, have an attachment upon what is known as the Scituate farm, included in one of your mortgages?

A. They did.

Cr. int. 200. Did you not understand that Mr. Potter was acting in behalf of said company, or of his interests in said company, at the time when he made the tender to you?

A. I understood he was acting in behalf of his interests in the company.

630 Cr. int. 201. Look at Exhibit DD, annexed to your former deposition in this cause, and state from what book of the company, if from any, the figures in that statement were derived.

A. I think they will be found in the ledger, under "profit and loss, manufacturing accounts."

Cr. int. 202. When you made and annexed that statement to your former deposition, did you believe and testify that it was correct?

A. I did.

Cr. int. 203. To what page of the ledger did you refer previous to giving your answer to the question prior to the last?

A. Page 124, and to de laine and cassimere accounts, pages 65, 62, and 63.

Cr. int. 204. Is there any special account for coal at the mill in 1852, upon the books produced here?

A. Yes, there is. It was transferred December 31, 1852, to Atlantic De Laine Mill account.

Cr. int. 205. Was it included in the balance of the mill account which you have already given us?

A. Whatever was on hand at that time was included. The whole amount of coal purchased was transferred to mill account. Whatever was on hand December 31 will appear in the balance of mill account.

Cr. int. 206. Were not all the second quality and imperfect goods sent to the agents at Hartford—Day, Owen & Company?

A. All but few of them were.

Direct examination resumed by Mr. Payne:

Int. 27. Explain the character of the private letter-book from which Exhibit A was taken, and give the reasons why it was placed in that book rather than upon the books of the company?

A. It consists largely of my private correspondence, and includes more or less of my private letters to the stockholders, which were of such a nature that it was not desirable the clerks should be acquainted with them, and I considered the letter to Frieze of a similar nature.

Int. 28. Explain why the statement Exhibit A was sent to Mr. Frieze after the injunction was granted, and not before?

631 A. After receiving the letter marked "H," annexed to my former deposition, I saw Frieze, and gave him verbally a statement of the condition of the affairs of the company, with which he expressed himself satisfied, and I didn't suppose any further statement was necessary until after the injunction was granted.

Int. 29. Explain what you meant in your former deposition by saying that the statement which you sent to Frieze was a copy of the books.

(Objected to.)

A. I meant that it was made up from the accounts on the books.

Int. 30. Explain what you meant in your former deposition by saying that it was such a statement as you sent annually to the directors.

A. I meant that it was such a statement as we were in the habit of sending to the directors at the time my deposition was given and for some time previous.

Int. 31. State whether the estimated value of the cassimeres and de laines on hand, in Exhibit A, is more or less than was realized upon the sale of the same, and state the amount of the difference.

(Objected to.)

A. It is more than was realized upon the sale. The de laines netted $8,488.74 less than their estimated value, and the cassimeres netted $124.62 more than the estimated value.

Cross-examination resumed by Mr. Jenckes:

Cr. int. 207. In the paper filed before the master, and marked by him "Exhibit L," and purporting to have been sworn to by you, did you not make the following assertion respecting the statement Exhibit A: "This statement was a correct and true statement of the affairs and condition of the De Laine Co., and is similar to the statement furnished to Gen. James, as well as the other directors, annually, on the first of January?"

A. I did.

632 Cr. int. 208. Was Gen. James a director in the company at any time after he failed in September, 1851?

A. He was considered so until the time of the statement, March, 1853.

Cr. int. 209. In this Exhibit L did you not also make the following assertion: "The statement furnished the assignee was a true copy of the books January 1, 1853?"

A. I did.

Cr. int. 210. This paper purports to have been signed and sworn to on the 17th of November, 1868. Is that the true date?

A. I suppose it to be.

Cr. int. 211. Are there any entries upon the books of the company now produced here, or upon any books of the company, to your knowledge, which show the loss or gain upon cassimeres and de laines, which you have given in your answer to the 31st direct interrogatory?

A. There are not.

TUESDAY, *October* 8, 1872.

Present: For complainant, Mr. Parsons and Mr. Jenckes; for respondents, Mr. Payne.

[Mr. Chapin wishes to make the following addition, after reading his previous testimony, to his answer to cross-interrogatory No. 24: Unless you consider the trial balances, which do show the condition of the company as it appears on the books, such a statement.]

Cross-examination resumed by Mr. Parsons:

Cr. int. 212. In the account Exhibit L, filed before the master and sworn to by you, referring to the statement of the condition of the company, dated February 26, 1853, it is there said that said statement "was correct and true, and was the statement of the condition and affairs of the said company upon which the said Frieze proposed to exe-

633 cute, and did execute, the said instruments of release and settlement, and was the only written statement of the condition and affairs of said company ever called for by said Frieze, or presented to him by said Chapin, with the exception of certain verbal statements and explanations consistent therewith." Did you so state and swear in said account, Exhibit L, presented to the master?

A. I did.

GEO. W. CHAPIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 8th day of October, A. D. 1872.

FRANCIS A. DANIELS, *Examiner.*

634 *Deposition of Samuel C. Blodgett.*

SAMUEL C. BLODGETT, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

Direct examination by Mr. Payne:

Int. 1. What is your present occupation?

A. I am treasurer of the Providence Institution for Savings.

Int. 2. About how long have you held that place?

A. I have been in the institution for twenty-five or six years.

Int. 3. Have you ever been a book-keeper?

A. Yes, sir.

Int. 4. Have you at any time kept the books of the Atlantic De Laine Company?

A. I have, sir.

Int. 5. Have you examined the books and accounts of that company, with a view to ascertain its condition, on the 31st of December, 1852, or the 1st of January, 1853?

A. Yes, sir.

Int. 6. State what, at that date, was the amount of the bills payable of the company.

A. $410,615.39.

Int. 7. What was the "amount due agents for advances on goods?"

A. $90,026.19.

Int. 8. What was the "amount due various persons on account?"

A. $51,404.44.

Int. 9. What was the amount of the capital stock of the company?

A. $237,495.53.

Int. 10. What is the whole amount of these items?

A. $789,541.55.

635 Int. 11. What was the amount of cash and bills receivable on hand?

A. $13,584.92.

Int. 12. What was the cost of the real estate, cassimere department, and amount Charles L. James's contract-account?

A. $310,006.04.

Int. 13. The amount due from Frieze, assignee?

A. $53,314.77.

Int. 14. What was the amount due from sundry persons?

A. $2,061.38.

Int. 15. What was the amount of wool, cotton, and supplies at the mill?

A. $190,692.17.

Int. 16. What was the amount of de laines and cassimeres on hand?

A. $149,516.74.

Int. 17. What is the difference between the debit and credit sides of the account?

A. $70,365.53.

Int. 18. Have you examined the list of notes in Exhibit V in the original records annexed to the deposition of George W. Chapin, pages 300, 301, and 302, and the memorandum at the end of that list, on page 302: "The notes given Hoyt, Tillinghast & Company, Hacker, Lea & Company, and Dodge, Tucker & Company, are for collateral of their acceptances of our drafts loaned us?" If so, please explain these transactions as they appear on the books of the company.

A. I have examined the list of notes and the memorandum at the end of that list. It was within my knowledge, at that time, that the company, from time to time, borrowed the acceptances of their drafts on and of Hoyt & Tillinghast, Hacker, Lea & Company, and Dodge, Tucker & Company, and gave their notes of same date and amount as collateral for these acceptances. The notes were paid by the company and the drafts by the acceptors. These transactions were entirely independent of drafts drawn and accepted for advances on goods shipped to said parties. Furthermore, these borrowed acceptances and collateral notes do not appear in the accounts-current which Hoyt & Tillinghast or Hacker, Lea & Company rendered the company; but in the ac-
636 counts rendered by Dodge, Tucker & Company the acceptances are charged and the notes are credited, one offsetting the other; all of which transactions are fully explained in the books and accounts of the company.

Int. 19. Please state whether the item, "Due agents for advances on goods, $90,026.19," includes any of the notes given as collateral for drafts.

A. I have examined and compared the statement marked "A," annexed to Mr. Chapin's deposition, with the books of the company, and the item, "Due agents for advances on goods, $90,026.19," does not include any of the notes given as collateral for drafts. Every draft drawn and every collateral note given was duly credited and charged to the parties on whom they were drawn and to whom they were given. If this were not strictly correct, then the item, "Due agents for advances on goods," would have been increased exactly by as much more as the amount of the notes that were given.

Int. 20. Taking the condition of the company to be as you have stated it on the 31st of December, 1852, what was the value per share of the capital stock?

A. The value of the capital stock would be $237,495.53, less $70,365.53; or about, I should say, $700 a share—a fraction over that.

Int. 21. Please annex to your deposition the paper from which you have given these items.

A. I will and do.

(The paper is filed and marked "Exhibit F, F. A. D., examiner.")

Int. 22. State whether the item, "De laines and cassimeres on hand, viz, $149,516.74," does or does not include the goods unsold, in the hands of agents.

A. I have examined and compared the statement marked "F" with the books and accounts of the company, and find that the item "De laines and cassimeres on hand, $149,516.74," includes all the goods on hand and unsold in the hands of agents and at the mill; the amount at the mill being only $298.04.

Int. 23. Have you examined the books of the company; and, if so, state whether or not they show for what the bills payable
637 to Hill, Carpenter & Co., outstanding Dec. 31, 1852, were given? If so, state what they were given for.

A. I have examined the books with reference to the bills payable to Hill, Carpenter & Co. outstanding Dec. 31, 1852, and find they were all given for wool, and so stated on the books, with this exception: the two notes of November 3d and 7th, 1852, six months, for $5,000 each, were discounted November 24th, through Hill, Carpenter & Co., and the proceeds were received by the company.

Int. 24. Are these notes, or any of them, included in the item, "Due

various persons on account, $51,404.44," upon the statement marked "F," annexed to your deposition?

A. I examined the books with reference to this item, and find that there are no notes of any amount or description included in that item.

Cross-examination by Mr. Jeckes:

Cr. int. 1. Have you not read your answers to the direct interrogatories from a paper which you have held in your hands?

A. I have.

Cr. int. 2. Will you show me the page or pages upon the books of the company in which the statement marked "Exhibit F," from which you have read, appears in the form in which it appears upon said statement?

A. I cannot refer to the pages.

Cr. int. 3. Does it appear anywhere upon the books of said company, to your knowledge, in the form in which it is expressed in Exhibit F?

A. No, sir.

Cr. int. 4. Is there anywhere upon the books of the company, to your knowledge, an entry of "wool, cotton, and supplies at mill, $190,692.17?"

A. Not $190,692.17, but items that make up that account do appear on the books.

Cr. int. 5. Is there anywhere upon the books of the company, to your knowledge, the following entry: "De laines and cassimeres on hand, $149,516.74?"

A. No, sir.

Cr. int. 6. Is there anywhere upon the books of the company an entry, "Balance, $70,365.53"?

638 A. No.

Cr. int. 7. Will you look at the books of the company and state what the balance of the cotton-account was on the 31st of December, 1852?

A. $3,642.98.

Cr. int. 8. Will you look at the books of the company and state the balance of the wool-account on the 31st of December, 1852?

A. $147,823.96.

Cr. int. 9. Look at the books of the company and state the balance of the mill-account on the 31st of December, 1852.

A. $9,364.40.

Cr. int. 10. State, also, the balance of the cassimere-account on the 31st of December, 1852.

A. $12,680.23.

Cr. int. 11. State, also, the balance of the de laine account on the 31st of December, 1852.

A. $237,062.87.

Cr. int. 12. Is there any account upon the books of the company which shows what the actual cost of the mill and machinery was; that is, what Gen. James paid, or contracted to pay, for the same, to others than the Atlantic De Laine Company?

A. Not to my knowledge.

Cr. int. 13. Does the second item on the credit-side of the paper, Exhibit F, under the head of "Amount Charles T. James's contract-account," include any more than the amount paid by the company to Gen. James on his contract and the sums paid by the company for labor and materials which, in their opinion, belonged to said contract?

A. It does not.

Cr. int. 14. State what books and accounts of the company you examined previous to preparing your answers to the direct interrogatories.

A. I had the books of the company—the journal, cash-book, I think, ledger, and my own accounts-current, and every paper that was necessary for my examination.

Cr. int. 15. I want to know just what they were.

A. Hoyt & Tillinghast, account-current; Hacker, Lea & Co., account-current; Day, Owen & Co., account-current; Dodge,
639 Tucker & Co., account-current. I would add, also, that to these accounts-current we affixed statements, I think in every instance, of the stock on hand by them. I had certain letters handed to me, by my own request, to explain the stocks on hand. I can't say which particular one it was, Hoyt & Tillinghast or Hacker, Lea & Co. There was one that I didn't exactly make tally, and I asked for the letter, and it was explained to me by the letter itself. I don't recollect now which account it was in, but it was a small amount—a variation in the number of yards on hand that I couldn't recollect—and so I asked for this letter, and it was produced to me.

Cr. int. 16. Did you take the amount of goods in the hands of agents from the accounts-current of the agents themselves?

A. From the accounts current and a paper or a list handed to me by Mr. Chapin, with which I compared the stock on hand.

Cr. int. 17. What paper do you refer to, which was handed to you by Mr. Chapin?

A. That paper, Exhibit B, F. A. D.

Cr. int. 18. Did you know anything about that paper before it was handed to you by Mr. Chapin?

A. I hardly know how to answer that, sir. Undoubtedly, I have seen it before, years ago. I couldn't swear positively. Every year there was an account of that kind made up, and I have been in the habit of using them to make up my own statements from, and undoubtedly I saw that one.

Cr. int. 19. Have you any positive recollection of this paper prior to its being shown you by Mr. Chapin?

A. I can't say that I have.

Cr. int. 20. Did you notice the discrepancy between Day, Owen & Co.'s account of goods on hand and the memorandum upon this paper, Exhibit B, of what was in Day, Owen & Co.'s hands? (Handing the witness Day, Owen & Co.'s account-current, marked "I," and also "Exhibit B.")

A. I did, sir.

Cr. int. 21. Did you make any variation in your statement, accordingly?

A. I did not, sir.

Cr. int. 22. Have you now stated all the books and papers
640 to which you had access in making up your answers to the direct interrogatories?

A. I think I have.

Cr. int. 23. Did you have anything to do at the mill?

A. Nothing.

Cr. int. 24. Did you have any personal knowledge of what was done at the mill?

A. From the accounts that came from the mill, I had. Of personal knowledge of my own, no.

Cr. int. 25. Was your knowledge entirely drawn from accounts submitted to you, and statements made to you by others?

A. From the mill itself, by their own accounts, I think in every instance.

Cr. int. 26. Was your occupation anything more than that of book-keeper only?

A. That is all, sir.

Cr. int. 27. The Journal A produced here, and Ledger A, are mainly in your handwriting, are they not?

A. The journal is all in my handwriting, and the ledger principally.

Direct examination resumed by Mr. Payne:

Int. 25. You have been asked if you read your answers to the direct interrogatories from a paper prepared, and have stated that you did. Please explain how that paper was prepared.

A. My answers to the first questions put to me were to explain Exhibit F. I did not read from my paper.

Int. 26. You also read from a paper in your hand answers to the other questions put to you. Who prepared those answers?

A. I did.

Int. 27. You have been asked what books, papers, and accounts you examined for the purpose of ascertaining the condition of the company on the 31st of December, 1852. Will you state, as a book-keeper, and from your knowledge on that subject, whether you made such an examination, and an examination of such books, papers, and accounts as was necessary to ascertain correctly the condition of the company
641 as it appeared at that date from the books, papers, and accounts of the company?

A. I was handed a paper marked "I" in the case, to verify this account which I have filed, F. To verify this account I had to take the trial-balance and the account current and stocks on hand of the agents, to get at a correct statement.

Int. 28. Did the books, papers, and accounts which you examined, correspond with the paper handed to you to be verified?

A. With one exception; I think in Day, Owen & Co.'s account.

Cross-examination resumed:

Cr. int. 28. Please explain the item in the account of Day, Owen & Co. which did not correspond with that statement, and how the error arose.

A. My explanation of that is this: that account was written November 16th. There was unquestionably an account rendered December 31st, as there always was, and those figures were made up on the statement of December 31st, not on that of November 16th.

Cr. int. 29. Where is the trial-balance which you refer to?

A. At the office of the company.

Cr. int. 30. Is it or not upon any book that has been produced here?

A. The items are all in the ledgers.

Cr. int. 31. Is it upon any book that has been produced here?

A. No, sir; not that I have seen.

Cr. int. 32. Is the book now produced the book of trial-balances which you referred to?

A. It is, sir.

Cr. int. 33. Is the page headed, "Trial-balance, December 31, 1852," in your handwriting?

A. It is.

Cr. int. 34. Will you annex a copy of the same to your deposition?

A. I will have a copy made, and hand it to the examiner to be annexed.

(Subsequently filed, and marked "Exhibit H. F. A. D., examiner.")

642 OCTOBER 8, 1872.

The witness wishes to correct his answer to direct interrogatory 22, by adding: "and 53,221 yards de laines."

SAMUEL C. BLODGETT.

Examination taken, reduced to writting, and by the witness subscribed and sworn to before me this 8th day of October, A. D. 1872.

FRANCIS A. DANIELS,
Examiner.

643 *Deposition of John R. Balch.*

JOHN R. BALCH, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

Direct examination by Mr. Payne:

Int. 1. What is your present occupation?

A. Treasurer of the Providence and Worcester Railroad.

Int. 2. Have you been a book-keeper at any time?

A. Yes, sir; that has been my main business.

Int. 3. Have you heretofore, as an accountant, made an examination of the books of the Atlantic De Laine Co., and given your testimony in relation to the same before the master in this case?

A. I have.

Int. 4. Please examine the statement herewith presented to you, marked "F," and state whether or not you have compared it with the books and accounts of the Atlantic De Laine Co., and state whether, according to the books and accounts, it is a statement of the condition of the company of the 31st day of December, 1852, and whether it is a correct and true statement; and, if not, in what does it differ from the books and accounts?

A. I have compared said statement with the books and accounts of the company, and find it a true and correct statement.

Int. 5. Have you examined the list of notes in Exhibit V, in the original record, annexed to the deposition of George W. Chapin, pages 300, 301, and 302, and the memorandum at the end of that list, on page 302, to wit: "The notes given Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., are for collateral of their acceptance of our drafts loaned to us?" and explain these transactions as they appear from entries on the books and accounts of the company.

A. I find, on examining the books, that the company were in the habit of drawing accommodation drafts on said parties, from time to time, and giving their notes of same dates and amount as col-
644 lateral for said drafts. The drafts were credited on the books and the notes were charged on the books to said parties; thus balancing the account. The books also show that the company paid to Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., all the notes mentioned on said pages 300, 301, and 302 as due said parties, the payment in each case being a cash payment.

Int. 6. Examine the statement marked "F," and state if you have compared the same with the books and accounts, and state whether the item "Due agents for advances on goods, $90,026.19," includes any of the notes given as collateral for drafts.

A. I have compared it with the books and accounts, and find said item does not include any of said notes.

Int. 7. Examine the same statement and say if you have compared the same with the books and accounts of the company, and state whether the item "De laines and cassimeres on hand, $149,516.72," includes goods unsold in the hands of agents.

A. It does include them.

Int. 8. Have you examined the books of company, and if so, please state whether or not they show what the bills payable to Hill, Carpenter & Co., outstanding on the 31st of December, 1852, were given for; and if so, for what?

A. I find they were all given for wool but the two notes under date, November 3d and 2d, of $5,000 each, which were discounted through Hill, Carpenter & Co., who paid the company the proceeds, $9,698.33.

Int. 9. State whether, according to the books, these notes, or any of them, are included in the statement heretofore shown you in the item "Due various persons on account, $51,404.44."

A. They are not.

Int. 10. Assuming the statement marked "F" to be a correct statement of the condition of the company, what, at that time, was the value per share of the capital stock of the company?

A. About seven hundred and five dollars per share, or seventy per cent. of the par value of the shares.

Cross-examination by Mr. Jenckes:

Cr. int. 1. Did you find the statement, Exhibit F, in the form in which it is presented to you, upon any of the books of the company?

645 A. Not precisely as it is stated here, but the different accounts added together.

(Question repeated.)

A. No, sir.

Cr. int. 2. What books and accounts of the company were submitted to you for your examination?

A. The ledger, cash-book, day-book, or journal; and I have seen the note-book. All the books—any books I called for; the journal, ledger, cash-book, and the bill-book.

Cr. int. 3. Have you stated all the books and accounts that were submitted to you for the verification or examination of Exhibit F?

A. Yes, sir.

Cr. int. 4. Take the ledger, journal, bill-book, and cash-book, and say if you find upon either of them an entry in the words following: "Wool, cotton, and supplies at mill, $190,692.17."

A. I do not.

Cr. int. 5. Do you find on either of those books an entry in the words following: "De laines, cassimeres, on hand, $149,516.74?' '

A. No, sir.

Cr. int. 6. Do you find on either of those books any entry from which those figures may be derived?

A. I think I do, sir.

Cr. int. 7. Show them to us.

A. I don't know as I could now. If I had the papers here, I think I could.

Cr. int. 8. Do you find upon those books an entry in the words and figures following: "Balance, $70,365.53?"

A. No, sir; that makes the balance.

Cr. int. 9. What makes the balance?

A. The debit and credit added up make the balance?

Cr. int. 10. It is not on the books, you mean?

A. No, sir. That is the number on hand which has since been sold. I was shown the result of the sales.

Cr. int. 11. Take the books of the company and examine the
646 balances of the wool, cotton, supply, cassimere, and de laine accounts on the 31st of December, 1852, and state if you find any entries on those books which go to vary or alter the statements of those balances.

A. I should say that there was.

Cr. int. 12. Point out what, in your judgment, are the entries on the books which alter or vary those balances.

A. On page 122 of Journal A, under date of December 31, 1852, "Cotton, $3,642.98;" page 124, "Wool, $147,823.96; page 125, "Cassimere-account, $12,680.23;" page 125, "De laine-account, $237,062.87;" and page 124, "Mill account, $9,364.40."

Cr. int. 12. Are not the sums which you have given the balances themselves of those several accounts?

A. They so appear on the books, sir.

Cr. int. 13. What is the sum total of those entries?

A. $410,574.44.

Cr. int. 14. Do you find any entries on the books which vary or alter the amount of those balances or of that sum total?

A. There isn't anything, as far as I know.

Cr. int. 15. Did you examine the amount charged in Charles T. James's contract-account on the books of the company; and if so, state what portion of the second entry of credit on Exhibit F was made up of the amount charged in that contract-account?

A. Yes, sir. $256,615.11 was made up of the amount charged in that contract-account.

Cr. int. 16. Does that amount show or tend to show to you, as a book-keeper, what the cost or value of the mill was, or does it show merely the amounts paid by the company on that contract?

A. It shows, I suppose, the amounts paid by the company on the contract. I should say it doesn't show the cost or value of the mill.

Cr. int. 17. Were not the questions in the direct examination read to you by the counsel, and did you not read your answers from a written paper in your hands?

A. They were, and I did.

(The complainant offers in evidence a certified copy of the mort-
647 gage of Charles T. James to George W. Chapin, trustee, upon Gen. James's interest in the Atlantic De Laine Company, which is marked by the examiner "Exhibit G. F. A. D., examiner.")

OCTOBER 8, 1872.

(The witness wishes to make the following explanation of his answer to cross-interrogatory No. 2:

I wish to state that, in addition to the books named, I examined the account of stock at the mill and that of de laines and cassimeres on hand, and such other accounts as I thought necessary, to enable me to ascertain the accuracy of the statement. Any accounts I called for were shown to me. I do not now recollect any other than those I have mentioned.

The witness also wishes to make the following explanation of his answer to cross-interrogatory No 10:

I wish to say in explanation that I evidently did not understand the question. The assets deducted from the debts does make the balance,

but said balance is not stated on the books. I supposed the question referred to the quantity of goods on hand.)

Cross-examination resumed by Mr. Jenckes:

Cr. int. 18. Were the account of stock at the mill and account of goods on hand shown you in any book of the company?

A. I don't think they were on any book.

Cr. int. 19. Who told you that the accounts which were shown you were accounts of stock at the mill and of goods on hand?

A. George W. Chapin.

JOHN R. BALCH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, before me, this 8th day of October, A. D. 1872.

FRANCIS A. DANIELS, *Examiner.*

648 COMPLAINANT'S TESTIMONY.

Complainant files a certified copy of the mortgage of Charles T. James, to George W. Chapin, trustee, upon said James's interest in the Atlantic De Laine Company, dated August 1, 1851.

(Previously marked "Exhibit G. F. A. D., Ex.")

Also, the transfer from L. B. Frieze, assignee, to the Atlantic De Laine Co., of the right, title, and interest which General James had, at the time of executing his assignment, in and to the stock of said Atlantic De Laine Co., dated March 2, 1853, and annexed to the original deposition of said Chapin, where it is marked "Exhibit N."

(Previously marked "Exhibit K. F. A. D. Ex.")

Also, the release and covenant, dated March 2, 1853, signed by Josiah Chapin and others, to Charles T. James.

(Marked "Exhibit L. F. A. D., examiner.")

Also, a certified copy of the record of the supreme court of Rhode Island, in the petition for injunction. Lyman B. Frieze, assignee, v. George W. Chapin, trustee.

(Marked "Exhibit M. F. A. D., examiner.")

Also, a certified copy of the record of the supreme court of Rhode Island of the suit, Narragansett Brick Co. v. George W. Chapin et al.

(Marked "Exhibit N. F. A. D., examiner.")

Also, a copy of the mortgage from Charles T. James to George W. Chapin, dated August 1, 1851, known as the Scituate Farm mortgage. (See said copy in, and as part of, Exhibit N. of the record. The respondents agree that said copy, contained in Exhibit N, may be considered sufficient without further proof of said mortgage.)

649 Examination of witnesses on behalf of the complainant, before Francis A. Daniels, examiner, at his office, No. 29 Weybosset street, in the city of Providence, commencing on the 12th day of October, A. D. 1872.

Deposition of William J. Harris.

WILLIAM J. HARRIS, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

Direct examination by Mr. Parsons:

Int. 1. What is your age, residence, and occupation?

A. My age is sixty-four; residence, city of Providence; occupation, accountant.

Int. 2. Did you at any time make up a statement of the cost of the De Laine Mill at Olneyville, near Providence, Rhode Island? If so, state when, for whom, from what sources and in what way you made up said account, and state fully all that you did and used in making it up.

(Objected to.)

A. I did. I think somewhere about 1855. General James came to me to make up an account of the cost of that mill, carried me to his office, gave me the key to the safe and the outside door, shew' me all his books and all his papers; said there they were, and askedme to take them, examine them, and make up the account; and I did so, from those books and papers. I used the regular books of account of General James and the books of account called the assignee's books and the usual parcels and receipts and papers such as you will find in any mercantile counting-room.

Int. 3. Did you verify, or take means to verify, the items which
650 you put into the account, and did you or not satisfy yourself that each item that went into that account belonged to the account of cost of the De Laine Mill?

A. I put nothing into the account but what I satisfied myself belonged to that mill. I did satisfy myself that each item that went into that account belonged to the cost of the De Laine Mill.

Int. 4. Did you, in any instance, consult any of the parties whose receipts or other papers bearing their names appeared among the books and papers of General James, so as to satisfy yourself?

A. In two or three instances I went to their places of business to investigate.

Int. 5. Have you recently examined the account you so made out, so as to refresh your recollection of it?

A. Yes, sir; I looked that over yesterday.

Int. 6. Will you state what is the total amount of the account you so made up as the statement of the cost of the De Laine Mill?

A. From my figures the footing is $339,973.56. If there is no mistake in adding, it is right.

Int. 7. Did you or not know whether all the items belonging to the cost of the De Laine Mill, or all the sums expended on it, are included in that account?

A. I do not know. I only know if there were any expenditures for which there were no vouchers in the office, of course I didn't get them. I only put down what I found there.

Cross-examination by Mr. Payne:

Cr. int. 1. Did you personally know anything about the cost of the De Laine Mill except what you derived from General James and the papers put into your hands by him, and the persons of whom you made inquiries about the work?

A. I did not.

WILLIAM J. HARRIS.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 8th day of October, A. D. 1872.

FRANCIS A. DANIELS,
Examiner.

651 OCTOBER 11, 1872.

Present: For complainant, Mr. Parsons; for respondents, Mr. Payne.

Deposition of Lyman B. Frieze.

Lyman B. Frieze, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

Direct examination by Mr. Parsons:

Int. 1. What is your name, age, residence, and occupation?

A. Lyman B. Frieze; age, forty-seven; residence, city of Providence. I am a merchant.

Int. 2. Will you examine the letters purporting to be original letters written by you to Charles T. James, in 1853, and state whether they are the letters so written by you; and will you annex to your deposition copies of them?

(Objected to as irrelevant.)

A. They are. I will annex copies, as requested.

Int. 3. In the petition for injunction filed by you as assignee of General James for the benefit of his creditors, and in your own character as assignee and as the owner in trust of the equity of redemption in certain estates mortgaged by said James, I find this language: "That said James performed his said contract, and also, at the request of the parties, expended money, performed labor, and furnished materials and machinery in addition to and extra of said contract, as the said James and the petitioner claims, to the amount of $55,000." This petition was sworn to by you. Will you state whether the said item of $55,000 extra of the contract was included in or formed any part of the Charles T. James contract-account with the De Laine Company, amounting to $277,683.83, or of the assignee-account, amounting to $53,314.77?

652 A. It is so long since the transaction occurred that I should want time to look over the items in the account before I could give a statement, accurately, on the question asked me. I could do so by to-morrow or next day by being furnished with the schedule of accounts.

Int. 4. Will you make the examination of the schedules and accounts and make your answer to this question?

A. I will.

(Respondents reserve cross-examination until interrogatory No. 3 is answered.)

Adjourned to October 14th, at 5 p. m.

OCTOBER 14, 5 p. m.

Present, for complainant, Mr. Parsons; for respondents, Mr. Payne.

Direct examination of Mr. Frieze resumed:

(Interrogatory No. 3 repeated.)

A. I have no accounts or figures from which I could give any definite statement as to what these extra charges were for. But, as near as I can recollect, they were made up by Gen. James, on his construction as to the meaning of the contract. I can't say whether any of the items under the charges of extra were included in the charges made by me against the company as assignee.

Int. 5. Were they or not included in any of the charges made by the company against you as assignee?

A. I can't say from any knowledge I had in the matter.

Int. 6. Did they form any part of the account of $53,314.77, charged against you as assignee?

A. I can't say now whether they did or did not form any part of that account.

Int. 7. Did they form or enter into any part of the account, $277,683.83, charged against Charles T. James, contract-account, in account with the Atlantic De Laine Company?

A. It is so long since I have had any papers or accounts in my hands that I can't say whether they were rendered in that account or not.

653 Int. 8. Do you mean by what you have said to state that you do not know and can form no idea as to whether the amount of charge for extra work, labor, and materials appearing in your petition for injunction formed or did not form a part of the account to which you have been referred?

A. It has been so long a time since I had anything to do with the accounts, books, or papers connected with the Atlantic De Laine Company or Charles T. James that I have no recollection whatever as to whether they do or do not.

Int. 9. I understand you, then, to mean by what you now testify to, that you have no recollection concerning the matters in question sufficient to enable you to recollect definitely concerning the same. Am I or am I not correct?

A. I have no recollection as to the details of any of the accounts at this time.

Int. 10. Were you at any time while you were acting as assignee of General James, either in connection with the dealings between you and the Atlantic Delaine Company or with any other parties who claimed to be creditors of General James, notified that you would be held personally responsible, independent of your position as assignee? If so, state when, and by whom.

A. I have no recollection in the matter of any such claim, excepting by a reference to the book that was shown me on Friday, in which there was a statement to that effect. I think I saw it in that book.

Cross-examination by Mr. Payne:

Cr. int. 1. State whether, to the best of your recollection, you ever had any personal knowledge in relation to the items of the claim for extra work, or any knowledge of the same except what you derive from the statements of General James.

(Objected to.)

A. I can't say that I ever did have any other knowledge.

Cross-int. 2. Were you in any way employed by General James before the assignment to you?

A. I was, sir.

654 Cr. int. 3. In what capacity?

A. As clerk and attorney.

Cr. int. 4. State, if you know, whether the money received from time to time by General James, on account of his contract to build the de laine mill, was used exclusively in the construction of that mill, or was used in his business.

A. It was used in his general account or business.

Direct examination resumed:

Int. 11. Do you mean, by your last answer, to indicate or suggest the fact that the money used and applied by General James in connection with the completion of his contract with the de laine mill, for building

the same, was used otherwise than for the purpose of the completion of that contract by him, or by you in carrying it out?

A. Nearly all the moneys that he received while I was connected with him were used for his general business, bills payable maturing, and bills for various accounts.

Int. 12. Did you, under your contract as assignee to complete the construction of the de laine mill, carry out that contract?

A. I believe that I did, according to the spirit of the contract.

Int. 13. Was that contract completed?

A. As I understand it, it was.

LYMAN B. FRIEZE.

(The witness produces copies of the letters called for in direct interrogatory No. 2, which are respectively marked by the examiner, Exhibits O, P, Q, R, S, T, U, V, W, X, Y, and Z. F. A. D., examiner.)

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me, this 14th day of October, A. D. 1872.

FRANCIS A. DANIELS, *Examiner.*

655 EXHIBIT A.—F. A. D., *Examiner.*

Statement of Atlantic De Laine Company, January 1, 1853.

DR.

Bills payable	410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CR.

Cash and bills receivable on hand	13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James, contract-account	310,006 04
Due from L. B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres, on hand	149,516 74
Balance	70,365 53
	$789,541 55

I would state, our directors estimate that $50,000 or more of the above balance accrued by the non-fulfil'ment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

GEO. W. CHAPIN, *Treasurer.*

PROVIDENCE, *February* 26, 1853.

656 EXHIBIT B.—F. A. D., *Examiner.*

De laines and cassimeres on hand, Dec. 31, 1852.

H. T. Co., 323 cases.....494,293 yds.
H. L. Co., 194 " .....296,848[1] "
D. T. Co., 182 " .....275,485[3] "

D. O. Co., 36 "	48;872 "	
At Globe Print Works	123,723 "	
At the mill	53,211 "	
		1,292,433 yds.

De laine debeges on hand.

H. L. Co.	43,925[1]	
H. T. Co.	11,093[1]	
Globe Print Works	61,723[1]	
At mill	3,014[1]	
		119,756 yds.
		1,412,189 yds. $147,734 30

Cassimeres.

H. L. Co.	65 cases	1,717[2] yds.	
H. T. Co.	28 "	756[2] "	
		2,474 yds.	1,484 40
At mill			298 04
			149,516 74

149,516 74
149,218 70

298 04
295 81

2 13

657 EXHIBIT C.—F. A. D., *Examiner.*

Stock at mill, Dec. 31, 1852.

Wool on hand, 332,540 lbs., abt. 44 @ 46c.	$147,823 96
Cotton on hand, 28,470 lbs.	3,642 98
De laine stock at mill	22,306 26
Cassimere stock at mill	7,554 57
Supplies and repairs per de laine account	5,225 66
" " " " cassimere "	2,124 60
Coal at mill	4,827 75
Furniture	2,000 00
	$195,508 75

190,692 17
195,505 78

4,813 61—unpaid bills.

9,364 40
3,642 98
147,823 96
22,306 26
7,554 57

190,692 17—see trial-balance.

DR *Atlantic De Laine Co. in account with Hacker, Lea & Co.* CR.

1852.								1852.						
9m	30	To balance		92	195 28	12,736 30		12m	31	By net sales due 7m 11		92		8,592 86
				192	274 98									
10m	2	" accept due, 4m 2				2,000				" " " " 8m 1			30 66	2,225 42
				213	78 99							150		
	13	" 1 pce. cass. sale 9-30 8m 25¹ y. @ 60c				15 15				" " " " 7m 28			38	5,128 40
		A 49		209	178 62									
	15	" 621.47 p. de laines sale 9-27 8m 1,379³ y. @ 15c.	$206 96											
		Less commission, 5 per ct	10 34											
						196 62						147		
		A 83											4 82	
	"	" 5 p. de laines 9-30 8m 151³ y. 18c	$25 79											
		Less commission, 5 per ct	1 28											
						24 51						150		
													62	
	16	" accept due, 3m 30				2,000						89		
	"	" " " 4m 7				3,000						97	29 67	
11m	8	" " " 5m 4				3,000						124	48 50	
	"	" " " 5m 11				2,500						131	62	
		" alt. sale 10-23 on 310 yds. 1c. yd	3 10										54 58	
	"	" cash paid Holsunth's expenses	5 00											
						8 10								
		A B												
		4												
	12	" 20 pcs. debage sale 9-24 8m 589 y. @ 18c	$106 07											
		Less commission, 5 per ct	5 30											
						100 77						144		
													2 42	
	24	" accept due 5m 25				3,000 00						145	72 50	
		A												
	27	" alt. sale 8-30 in 8m 93,798 y. @ 4c. yard				31 92						120		
	30	" cash paid yule designer to 11-4		31	1 86	360							64	
	"	" " designer's materials		31	23	25								
12m	1	" accept due 6m 1				2,000						152		
	7	" " 6m 6				3,500						157	50 67	
659	8	To 51 p. debage sale 10-7 8m, 1,540 y. @ 18c	$227 29										91 57	
		Less commission, 5 per ct	11 36											
						215 93						158		
		A 66											5 68	
		1301												
	11	To 51 p. debage sale 10-20 8m, 1,730¹y. @ 17²c	$127 79											
		Less commission, 5 perct	6 38											
						121 41						181		
		A 19											3 65	
	"	" all't sale 9-15 No, 286, 775 yds. 3c, yd	23 25											

	No. 44, 64, 17, 253, 1,984 " 2c. yd	39 69									
	No. 44, 64, 17, 253, 441 " 1c. yd	4 41									
	" 9-25 on 600 y. debage, 2c. yd	12 00									
			20	26	79 35						
22	" accept due 6m. 23				4,000				174	116	
"	" " " 7m. 2				2,000				183	61	
	A 24										
31	" 862.54 p. de laines sale 9-23 8m. 1,643¹y., @ 15c.	$246 49									
	Less commission, 5 per ct	12 32									
					234 17				143	5 58	
"	" 30 p. sale 12-31, due 7m 11, '53				2,577 86				192	82 49	
"	" all'ce sale 10-1 on 464 y. de laine, @ 2c yd				9 28		By balance interest			6 68	
"	" interest annexed				6 68		" balance account				27,796 37
				730 12	43,743 05					730 12	43,743 05
1852.											
12m 31	To balance			Dollars	27,796 37	12m. 31.	By am't credits goods ret. fr'd Globe Pg. Co				264 98

Errors excepted.

HACKER, LEA & CO.

PHILADELPHIA, 12m. 31, 1852.

EXHIBIT D[1].

DR. *Atlantic De Laine Co., in account current Interest to December 31st, 1852,* CR.

1852.					1852.			
Sept. 30	To balance due Dec. 31, '52			21,257 85	Nov. 19	By note		5,000 00
Oct. 8	" draft " April 7, '53		48 50	3,000 00	Dec. 7	" "		5,000 00
13	" " " 14, "		17 33	1,000 00	24	" "		6,000 00
Nov. 16	" " "			5,000 00	31	" sales due Oct. 3, '53	99 92	2,195 55
26	" " " May 27, "		73 50	3,000 00	31	" " " Aug. 19, "	361 44	9,469 74
30	" " " June 1, "		50 33	2,000 00	31	" " " July 28, "	34 46	994 48
Dec. 3	" " " " 1, "		50 33	2,000 00		forward		22,767 41
7	" "			5,000 00				
14	" "			6,000 00				
30	" " " " 23, "		86 50	3,000 00				
31	" interest dr. in reg.			169 33				
				51,427 18				51,427 18
1852.								
Dec. 31	To balance due this date			$22,767 41				

BOSTON, December 31, 1852.

E. E. DODGE, TUCKER & CO.

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EXHIBIT D[11].

Atlantic De Laine Company in account-current and interest-account with Hoyt, Tillinghast & Co. to 1st January, 1853.

1852.		DR.				
July	1	To balance of account as cash	33,293 21	184	1,174 83	1,020 98
	"	" our accept., due 31 Dec., '52	3,000	1	58	.....
	"	" " 31 " "	2,500	1	48	.....
	28	" " 29 Jan., '53	3,000	28	.....	16 11
	9	" cash remitted J. Hartman, Paris	90	176	3 04	.....
	10	" " p'd Bowers, 2 w'ks wages	60	175	2 01	.....
	24	" " " "	60	161	1 85	.....
	1	" " p'd W. B. Greene's expenses to Providence	119 90	184	4 23	.....
Aug.	3	" our accept., due 5 Feb'y, '53	3,000	35	.....	20 14
	6	" " 5 " "	3,000	"	.....	20 14
	20	" " 19 " "	2,500	49	.....	23 49
	23	" " 19 " "	2,000	"	.....	18 80
	24	" " 26 " "	6,000	56	.....	64 44
	31	" " 3 M'ch, '53	3,000	61	.....	35 10
	7	" cash p'd Bowers, 2 w'ks wages	60	147	1 69	.....
	21	" " " "	60	133	1 53	.....
	"	" goods ret'd, due 4 Dec., '52	15 28	28	08	.....
Sept.	2	" our accept., " 3 M'ch., '53	3,000	61	.....	35 10
	7	" " 9 " "	4,000	67	.....	51 40
	11	" " 13 " "	3,000	71	.....	40 85
	14	" " 13 " "	2,000	"	.....	27 23
	22	" " 9 " "	3,000	67	.....	38 55
	"	" " 16 " "	2,000	74	.....	28 38
	24	" " 23 " "	4,000	81	.....	62 14
	27	" " 23 " "	2,000	"	.....	31 07
	28	" " 30 " "	2,000	88	.....	33 75
	30	" " 30 " "	2,000	"	.....	33 75
	4	" cash p'd Bowers, 2 w'ks wages	60	119	1 37	.....
	9	" " examining records, in relation with C. F. James	5	114	11	.....
	18	" cash p'd Bowers, 2 w'ks wages	60	105	1 21	.....
		" 30 per cent. on sales of 'laines, Cr. Globe P'ting Co., due 2 Ap'l, '53	24,689 37	91	.....	430 88
Oct.	1	" our accept., " 2 "	3,000	"	.....	52 36
	"	" " " 2 "	3,000	"	.....	52 36
	5	" " " 7 "	4,000	96	.....	73 64
	8	" " " 9 "	2,500	98	.....	46 99
	13	" " " 14 "	2,500	103	.....	49 38
	23	" " " 21 "	3,500	110	.....	73 84
	26	" " " 21 "	3,500	"	.....	73 84
	27	" " " 28 "	2,000	117	.....	44 88
	29	" " " 30 "	3,300	119	.....	68 47
	2	" cash p'd Bowers, 2 w'ks wages	60	91	1 05	.....
	16	" " " "	60	77	89	.....
	30	" " " "	60	63	72	.....
		" goods ret'd, due 31 Jan., '53	247 49	30	.....	1 43
		" " 19 M'ch, '53	197 63	77	.....	2 93
		" " 10 Feb'y, '53	197 50	40	.....	1 51
		" " 19 July, '53	437 33	199	.....	16 68
Nov.	2	" our accept., due 28 Ap'l '53	3,000	117	.....	67 32
		" " 4 May, '53	3,000	123	.....	70 77
		" " 4 "	1,000	"	.....	23 59
	3	" " 28 Ap'l, '53	2,000	117	.....	44 88
	8	" " 2 May, '53	2,500	121	.....	58 01
	9	" " 11 "	2,500	130	.....	62 33
	11	" " 4 "	2,500	123	.....	58 97
	10	" " 11 "	2,500	130	.....	62 33
	18	" " 18 "	2,000	137	.....	52 55
662	24	" " 25 "	3,000	144	.....	82 85
	29	" " 30 "	2,500	149	.....	71 44
Nov.	13	To cash p'd Bowers, 2 w'ks wages	60	49	56	.....
	27	" " " "	60	35	40	.....
		" goods ret'd, due 27 May, '53	200 27	146	.....	5 60
Dec.	4	" our accept., " 25 "	2,000	144	.....	55 23
	23	" " 20 June, '53	5,000	170	.....	163 01
	14	" paid Bowers, 2 w'ks wages to 11th	60	18	21	.....
		" goods ret'd, due 1 July, '53	204 52	181	.....	7 11
	24	" our accept., " 23 June, '53	3,000	173	.....	99 53
		" paid Bowers 2 w'ks wages to 25th	60	8	09	.....
	30	" our accept., due July 3, '53	2,000	183	.....	70 19
	31	" Globe Printing Co., for 30 per cent. on sales due 5 April, '53, $52,423.91	15,727 17	94	.....	283 52
		" goods returned, due 2 Feb'y, '53	355 05	32	.....	2 18
		" " 8 July, 53	11 60	188	.....	36
		" balance of interest-account	1,541 16	.....	.....	.....
			198,612 48	.....	1,196,93	2,911 40

EXHIBIT D[11].—Continued.

		CR.				
1852.						
July	28	By cash bal's trans'd f'm Att'c D'laine Co	641 45	157		19 30
Sept.	30	" account sales, due 2 April, '53	83,297 91	91	1,436 37	
		" " 23 "	11,422 36	112	245 33	
Dec.	30	" " cass. account, 3 Aug., '53	14,000 37	214	574 58	
	31	" " debage, 21 Ap'l, '53	2,981 98	110	62 91	
		" " separate account 7 May, '53	446 48	126	10 78	
		" account sales, de laine account, Ap'l, '53	52,423 91	94	945 06	
		" balance of account-current	34,398 02			
			198,612 48		3,274 93	19 30

To bal. of account as cash, 1 Jan'y, 1853, 34,398.02.

E. & O. E.

HOYT, TILLINGHAST & CO.
COLIN BURLING.

NEW YORK, 31 *Dec.*, 1852.

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EXHIBIT D[111].

Sales by Day, Owen & Co., for account of Atlantic De Laine Co.

1852. 8 months—

Dec. 8. No. 287, 1 case c. warp cassimeres.... 464
" 332, 10 ps. " " 243
—— 707@47½ 335 82

(Closed.)

CHARGES.

Comm'ns and guar's, 5 per cent 16 79
For cart'g and ins..... 2 63
—— 19 42

Due Aug't 11, 1853..... $316 40

E. E.

DAY, OWEN & CO.,
Per BRYANT.

HARTFORD, CT., *Dec.* 24, 1852.

The Atlantic De Laine Co. in account with Day, Owen & Co.

1852.		DR.		
Nov. 22.	To balance of account		6,055 87	
June 12.	" acceptance May 24, 1852, 6 mos		1,000 00	
Sept. 16.	" " Sept. 6, " 6 "		2,000 00	
26.	" " " 20, " 6 "		2,000 00	
Nov. 30.	" " " 27, " 6 "		2,000 00	
Oct. 20.	" " Oct. 18, " 6 "		3,500 00	
Nov. 24.	" " Nov. 22, " 6 "		5,000 00	
	Avg. due Mar. 2. 1853		21,555 87	
	Int. 2 mos. and 26 d's		308 96	
				21,864 83

1852.	CR.		
Nov. 30.	By sale due May 28, 1853.	26,052 42	
	Less 30 pr. ct. transf'd W. G. Chapin.....	7,815 73	
			18,236 69

By sale due May 18, 1853	1,747 35	
" " " Aug. 11, "	316 40	
Avg. due May 28, 1853	20,300 44	
		20,300 44
Debit bal. May 28, 1853		1,564 39

E. E.

DAY, OWEN & CO.,
Per BRYANT.

HARTFORD, CT., *Dec.* 24, 1852.

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EXHIBIT E.

Mem. of goods on hand, account of "Atlantic De Laine Co."

17.	245, 247@250		5c.	7, 636[2]
25.	386, 389		2	2, 968[1]
40.	473		1	1, 576[2]
29.	512@515		4	6, 341[3]
49.	609 @ 615		7	10, 749[2]
38.	441, '44 @ 446		4	6, 454[1]
48.	705, '06, '16 @ '18		5	7, 978
36.	728 @ 731		4	6, 349[3]
36.	734		1	1, 617[2]
65.	747, '49		2	3, 179
69.	758, '63 @ '65		4	6, 379[2]
54.	895		1	1, 559
23.	907 @ 914		8	12, 844[2]
45.	922 @ 926		5	7, 805[2]
45.	948 @ 951		4	6, 242
66.	1,011 @ '16		6	9, 678[1]
77.	1,031 @ '39		9	14, 834[3]
85.	1,058 @ '63		6	9, 062[2]
85.	1,072, '73		2	2, 990[2]
71.	1,685 @ '94		10	15, 685[1]
94.	1,112 @ '14		3	4, 565[1]
94.	1,121 @ '26		6	9, 560[1]
62.	1,185 @ '94		10	14, 695[1]
19.	274 @ '77		3	4, 448[3]
25.	380		1	1, 465[2]
90.	1,236 @ '41		6	9, 464[1]
84.	795, '96		2	2, 981[1]
40.	466 @ '69		4	5, 948
54.	881 @ '85		5	7, 601[3]
83.	855, 859		2	3, 055[2]
50.	671 @ '73		3	4, 527[2]
15.	260, '62		2	3, 203[3]
17.	254		1	1, 546
22.	414		1	1, 562
29.	522, '27		2	3, 185[3]
25.	391, '92		2	2, 980[2]
23.	916, '17		2	3, 260[1]
54.	898		1	1, 551[3]
45.	928		1	1, 524[2]
15.	261		1	1, 564[1]
	17.	255	1	1, 544[1]
665	22.	410	1c.	1, 565[3]
	29.	523, '24	2	3, 146

50.	674, '77		2	3,189[3]
46.	623, '25		2	3,035[3]
48.	719, '22		2	3,306[3]
45.	930		1	1,516[2]
25.	385		1	1,494[3]
19.	280		1	1,574[1]
126.	1,358, '59		2	3,133[1]
129.	1,380, '82		2	3,055[2]
129.	1,389, '90		2	3,039[3]
121.	1,420, '21		2	3,066[1]
121.	1,439, '40, '48 @ '53		8	12,440[3]
123.	1,454		1	1,533
123.	1,456 @ '64		9	13,953[3]
111.	1,522, '23		2	3,056[1]
123.	1,545		1	741[2]
128.	1,546 @ '53		8	12,348
53.	1,566 @ '68		3	4,660[1]
111.	1,582 @ '88		7	10,711[2]
130.	1,592 @ '98		7	10,699[3]
86.	1,607		1	1,490[1]
86.	1,612 @ '15		4	6,006[2]
86.	1,665 @ '68		4	6,131[1]
87.	833, 831		2	2,768[3]
	Total		226c.	349,834 yards.
33.	1,504 @ '09	6c.	9,361[3]	
33.	1,514 @ '17	4	6,218[3]	
61.	1,618 @ '27	10	15,627	
133.	1,639 @ '41	3	4,526	Coarse cloths,
63.	1,646 @ '55	10	15,309[2]	remnants, etc.
133.	1,673 @ '77	5	7,781[3]	
135.	1,683 @ '86	4	5,991[1]	
135.	1,696 @ 1,700	5	6,708[1]	
	Total	47c.	71,524[1] yards.	

226 cases, 349,834 yards.
47 " 71,524[1] "
47 " 68,541 cashmeres.

320 cases, 489,899

HOYT, TILLINGHAST & CO.,
BURLING.

NEW YORK, 31 *Dec.*, 1852.

666	112. 1,262 @ '65	4c.	6,055[1]	
	112. 1,268 @ '71	4	6,034	
93.	1,000	1	1,425[1]	
114.	1,315	1	1,481[3]	
114.	1,319 @ '25	7	10,298[1]	
120.	1,385	1	1,478[1]	Cashmeres.
120.	1,396 @ 1,403	8	11,578	
69.	1,424 @ '29	6	8,812[1]	
122.	1,444, '45	2	2,945[3]	
122.	1,469 @ '77	9	12,996[1]	
69.	1,496 @ '99	4	5,436	
		47c.	68,541 yards.	

B.	38, 39	2c.	2,400[1]	"debèges."
	43 @ 45	3	3,548[3]	
	15	1	1,523[2]	
	1	1	1.255	
	8	1	1,169[3]	
	9	1	1,196	
		9c.	11,093[1] yards.	

E. 1, 8, 9. 3 bales flannels, 4,392[3].

396.	4 p's	103½	yards.	Cassimeres.
410.	12 "	312¼	"	
251.	1 "	20	"	
	17 "	435[3]		
419.	11 "	320[2]		
	28 "	756		

HOYT, TILLINGHAST & CO.,
BURLING.

NEW YORK, 31 *Dec.*, 1852.
REC. 585—28

1852.										
Oct. 2,	9 mos.	2	cases de laines, No.	31,371, 1,488[2]; 49,601, 1,488	2,976[3]	15				446 51
4,	"	5	" "	52,678, 1,511; 52,681, 1,522[2]; 679, 1,518; 680, 1,537[1]; 682, 1,530[2].	7,619[3]	13[2]	less 1 per ct.			1,018 38
5,	"	1	" "	83,858	1,526[3]	14[2]				221 38
6,	"	1	" "	94,1118	1,579[3]	15				238 46
7,	"	1	" "	94,1119	1,608[2]	15		241 28		
		1	" "	31,372	1,543	15		231 45		
7,	"	2	" "	47,1213, 1,518[2]; 67,1214, 1,511	3,029[2]	17	less 2[2] per ct.			472 73
8,	"	1	" "	48,710	1,514[1]	15				502 15
11,	"	1	" "	47,1252	1,554[1]	17	" 2[2] "			227 14
11,	"	1	" "	47,1253	1,496[1]	17	" 2[2] "			257 62
11,	"	1	" "	47,1254	1,477[2]	17	" 2[2] "			248 00
12,	"	1	" "	47,1255	1,444[3]	17	" 2[2] "			244 90
12,	"	1	" "	47,1245	1,617[3]	17	" 2[2] "			239 47
12,	"	1	" "	86,1229	1,613[2]	15	" 2[2] "			268 15
13,	"	1	" "	47,1246	1,634[3]	17	" 2[2] "			235 97
13,	"	1	" "	55,1158	1,480	14[2]	" 3[2] "			270 96
13,	"	1	" "	102,1209	1,543[2]	16	" 2[2] "			207 09
13,	"	1	" "	102,1210	1,525[3]	16	" 2[2] "			240 79
13,	"	1	" "	60,966	1,502[1]	14[2]	" 2 "			238 02
14,	"	1	" "	55,1159	1,456[3]	14[2]		211 23		213 47
		—	" "	47,1251	20	17		3 40		
668 Oct. 16,	9 mos.,	1	cases de laines, No.	66,1276	1,503[3]	16				214 63
19,		1	" "	49,602	1,472	14[2]				240 60
22,		1	" "	46,629	1,566	14		219 24		213 44
		6	" "	36,741, 1,572[1]; 31,370, 1,474[3]; 60,967, 1,504; 62,1181, 1,461[3] (2¼ short) 46,630, 1,571; 49,603, 1,413[3],	9,067[2]	14		1,269 13		
23,		1	"cashmere,	114,1317	1,481[1]	17[2]				1,488 37
25,		1	" de laine	66,1019	1,589[1]	14				259 22
26,		1	" "	16,207	1,422[3]	14[2]				222 49
28,		1	" "	125,1370,	1,497	17		254 49		206 30
		1	" "	125,1368	1,517	17		257 89		
		1	" "	126,1363	1,543[2]	16[2]		254 68		
										767 06

EXHIBIT E[1]—Continued.

Nov. 2,	" 1	"	"	125,1367	1,524[3]	17		259 21		
	1	"	"	125,1369	1,509[2]	17		256 62		
	1	"	"	86,1228	1,660[3]	15[2]		257 42		
12,	" 1	"	"	126,1364						773 25
16,	" 2	"	"	66,1278, 1,537[4]; 126,1365, 1,496[1]	1,512	16	less 3 per ct.			234 66
18, 6 mos.,	2	"	"	27,416, 1,496[1]; 66,1017, 1,601[1]	3,034	16	" 3 "			470 88
19, 9 mos.,	1	"	"	102,1211	3,097[2]	14	" 2[2] "			422 81
Dec. 1,	" 1	"	"	126,1366	1,534[3]	14[2]				222 54
8,	" 6	"	"	36,739, 1,566[2]; 742, 1,590[3]; 743, 1,541[3]; 55,1157, 1,536[1]; 1,160, 1,473[3]; 1,161,1509	1,477[1]	16	" 3 "			229 27
8,	" 2	"	"	(5½ short) 47,1247, 1,664[1]; 47,1251, 1,412[3]	9,218	14	" 1 "			1,277 62
8,	" -	"	"	47,1251	3,077	15	" 1 "			456 12
8,	" 1	"	"	48,711	70[3]	15	" 1 "			10 50
21,	" 2	"	"	27,417, 15,13[2]; 44,644, 1,496[3]	1,506[3]	14				210 94
	" 1	"	"	102,1212	3,010[1]	14		421 44		
					1,513[3]	15		229 06		
669	Dec. 24, 9 mos.,	2		2 cases de laines, No. 125,1343, 1,504; 126,1362, 1,521[1]	3,025[1]	16				648 50
		65								484 04
					99,207[2]					14,844 43
				Returned, 32 ps., 961 yds., @ 16c			153 76			
				20 " 590[2] " " 16			94 48			
				2 " 50 " " 16			8 00			
								256 24		
				Allowances				216 14		
										472 38
										$14,372 05
99,207[2]				CHARGES.						
1,601[2]				Insurance, 35.93; freight and trucking 30 cases to N. Y., 14.45				50 38		
97 606				Trucking out, labor, &c				71 87		
				Paid allowances for damage				3 00		
				Comm. and guar. 5 per cent				718 60		
										843 85
				Due Aug. 19, '53						$13,528 20

BOSTON, *December* 31, 1852.

E. E.

DODGE, TUCKER & CO.

670 EXHIBIT E[1].—Concluded.

Goods on hand.

A	16,	4 cases,	208, 209, 210, 211	5,875[2]
	17,	4 "	237, 238, 239, 240	5,793
	15,	4 "	256, 257, 258, 259	5,768[3]
	27,	2 "	415, 418	3,019[3]
	51,	6 "	575, 576, 577, 578, 579, 580	8,910[3]
	49,	2 "	599, 604	3,044[1]
	46,	4 "	628, 631, 632, 633	6,311[2]
	44,	2 "	642, 645	3,013[1]
	48,	4 "	709, 712, 713, 714	6,047[1]
	65,	3 "	750, 751, 752	4,839[1]
	69,	6 "	772, 773, 774, 775, 776, 777	9,535[3]
	71,	4 "	786, 789, 787, 788	6,371[2]
	82,	5 "	809, 810, 811, 812, 813	7,833
	45,	3 "	953, 956, 957	4,702[1]
	60,	1 "	963	1,479[1]
	66,	3 "	1018, 1020, 1021	4,774[1]
	77,	5 "	1025, 1026, 1027, 1028, 1029	8,191[2]
	85,	4 "	1068, 1069, 1070, 1071	6,135[1]
	71,	5 "	1080, 1081, 1082, 1083, 1084	7,769[3]
	78,	4 "	1100, 1101, 1102, 1103	5,371[1]
	94,	2 "	1117, 1120	3,191[1]
	42,	4 "	1137, 1138, 1139, 1140	5,237[3]
	62,	4 "	1180, 1182, 1183, 1184	5,912
	102,	1 "	1208	1,537[1]
	90,	3 "	1233, 1234, 1235	4,614[3]
	66,	4 "	1277, 1298, 1299, 1300	6,258
	52,	6 "	1291, 1305, '06, '7, '8, '9	9,384
	126,	1 "	1344	1,549[2]
	86,	4 "	1372, 1373, 1374, 1375	5,849[1]
	114,	1 "	1318	1,478[2]
	129,	6 "	1409, '10, '11, '12, '13, '14	8,785[2]
	120,	5 "	1415, '16, '17, '18, '19	7,240[3]
	121,	6 "	1434, '5, '6, '7, '8, 1503	8,715
	123,	5 "	1481, '82, '3, '4, '5	7,864[3]
	122,	5 "	1486, '7, '8, '9, '90	7,039[1]
	69,	5 "	1491, '2, '3, '4, '5	6,922
	33,	4 "	1518, '19, '20, '21	6,227[3]
	134,	5 "	1535, '6, '7, '8, '9	7,718[2]
	111,	5 "	1540, '1, '2, '3, '4	7,669[3]
	128,	4 "	1554, '5, '6, '7	6,163
	53,	3 "	1569, '70, '71	4,647[3]
	130,	3 "	1599, 1600, '01	4,628[1]
	86,	2 "	1610, 1611	2,987[2]
	61,	4 "	1628, '9, '30, '31	6,279[1]
	133,	4 "	1645, '6, '80, '81	6,042[1]
	63,	4 "	1661, '2, '3, '4	6,185[2]
	86,	3 "	1670, '1, '2	3,922[3]
	135,	4 "	1692, '3, '4, '5	6,006[3]
	126,	20 ps.		590[2]
	125,	2 "		50

Total, 182 cases, 22 ps., 275,485[3] yds.

671 EXHIBIT E[11].

This exhibit contains a detailed account of sales and the following account of goods:

On hand Nov. 16, 1853.

3/8	133	1 case	2d cashmeres	1,150	and invoices Nov. 1 & 8th, 7			
1 1/2	139	1 "	" "	1,344	cases,	9,689[2]	yds.	
	140	1 "	" "	1,374[1]		15,985[3]	"	
5/4	142	1 "	" de laines	1,538		25,675	"	18 cases.
	144	1 "	" "	1,528[1]*		39,259	"	29 "
	145	1 "	" "	1,514[2]†		64,934	"	47 "

* Nov. 16 19, 24.

† Dec. 6, 17, & 27.

	146	1	"	"	"	1,559[1]
	147	1	"	"	"	1,471
66	151	1	"	"	"	1,460[3]
1325	152	1	"	"	"	1,513[1]
1	153	1	"	"	"	1,532
						15,985[2]
	5	5 cases & rem'ts				364
		7 "	320 pcs. = 9,613 yds. Dec. 31, 1852.			

EXHIBIT E[11].

Memo. of goods on hand, Atlantic De Laine Co., 12 mo., 31st, 1852.

	2 of	18	48	pieces de laines		1,731¾
		19	48	"	do.	1,749
		20	48	"	do.	1,756¼
		22	48	"	do.	1,758¾
		24	48	"	do.	1,751¼
	of	25	23	"	do.	840
A	16	216	55	"	do.	1 674¾
"	19 of	290	21	"	do.	663
"	21	312	51	"	do.	1,604½
"	30 of	359	22	"	do.	663½
"	25	390	49	"	do.	1,494½
"		393	49	"	do.	1,496
		Carried forward				
672		Brought forward				
A		394	48	pieces de laines		1,472¾
"	38	449	55	"	do.	1,661
"	40	480	50	"	do.	1,520½
"		481	50	"	do.	1,513
"		482	50	"	do.	1,532½
"		483	49	"	do.	1,498¾
"		484	50	"	do.	1,535
"	29	525	52	"	do.	1,572½
"	41	542	52	"	do.	1,569½
"		543	53	"	do	1,595½
"		544	53	"	do.	1,608¾
"	51	592	52	"	do. *a*	1,555
"		596	54	"	do.	1,601½
"	51	598	54	"	do.	1,589½
"	49	618	52	"	do.	1,525¾
"	46	627	51	"	do.	1,513
	1 of	8	36	"	do.	1,326
"	48	708	50	"	do.	1,520½
"	of	721	28	"	do.	824½
"		723	57	"	do.	1,698⅓
"	36	732	52	"	do.	1,576¾
"		736	54	"	do.	1,606¾
"	of	737	30	"	do.	857¾
"		738	54	"	do.	1,581¾
"	65	755	52	"	do.	1,598¾
"	69	767	52	"	do.	1,583¾
"		768	53	"	do.	1,618½
"		769	53	"	do.	1,594½
"		770	53	"	do.	1,589½
"		771	53	"	do.	1,572½
"	54	896	52	"	do.	1,531½
"		900	52	"	do.	1,573⅓
"		899	53	"	do.	1,554⅓
"	64	941	51	"	do.	1,545¾
"	45	952	52	"	do.	1,546¾
"	60	958	51	"	do.	1,523½
"		969	51	"	do.	1,520½
"	60	970	50	"	do.	1,494¾
"		972	50	"	do.	1,515½
"		973	52	"	do.	1,590½
	77	1,040	57	"	do.	1,694
		1,041	54	"	do.	1,630½

		Carried forward					
673		Brought forward					
	1,042	54	pieces	de laines			1,632
	1,043	54	"	do.			1,638¼
	1,044	54	"	do.			1,638½
	1,045	54	"	do.			1,641½
86	1,057	53	"	do.			1,574¾
71	1,096	53		do.			1,602¼
	1,097	53		do.			1,585
	1,098	53		do.			1,599
	1,099	53		do.			1,600¾
94	1,116	50		do.			1,512¼
	1,127	54		do.			1,615¾
	1,128	53		do.			1,568½
62	1,195	49		do.			1,460¾
	1,196	49		do.			1,469
	1,197	48		do.			1,460¼
	1,198	48		do.			1,467
	1,199	48		do.			1,456
86	1,230	56		do.			1,652¼
	1,231	56		do.			1,638¾
90	1,242	53		do.			1,579
A 90	1,243	52	"	do.			1,558½
	1,244	53	"	do.			1,586
52	1,284	52		do.			1,575½
	1,285	52		do.			1,576½
	1,286	52		do.			1,570
	1,287	52		do.			1,559½
66	1,303	53		do.			1,575¾
	1,304	50		do.			1,494½
126	1,340	52		do.			1,560
125	1,352	51		do.			1,536
	1,353	51		do.			1,541¼
129	1,391	50		do.			1,495
	1,392	51		do.			1,523
	1,393	51		do.			1,522
120	1,404	48		do.			1,462½
	1,405	48		do.			1,458¾
	1,406	48		do.			1,448¼
of	1,408	28		do.			856½
49	621	47		Ret'd sale,	$\frac{1}{10}$		1,379¾
66 of	1,301	26	"	"	$\frac{1}{10}$		730¼
A 24	862	53	"	"	"	$\frac{3}{5}$	1,642
		5	"	"	"	dge	151¾
Carried forward	4,707						143,511¾
674	Brot. up,	91	cases,	4,707	pieces		143,511¾
8m 26	5	"	250	"		Inv. entire,	7,624
9m 10	4	"	200	"		do.	6,011
" 27	5	"	217	"		do.	6,490¾
" 28	6	"	303	"		do.	8,985¼
10m 19	3	"	150	"		do.	4,568
" 20	3	"	120	"		do.	3,627
" 28	3	"	150	"		do.	4,371¼
11m 3	2	"	102	"		dd.	2,938¾
" 12	6	"	292	"		do.	8,898¾
" 15	5	"	248	"		do.	7,495¼
" 16	1	"	50	"		do.	1,531¼
" 17	7	"	349	"		do.	10,423½
" 18	1	"	45	"		do.	1,344¾
" 19	4	"	203	"		do.	6,168¼
" 22	7	"	353	"		do.	10,772¼
12m 1	9	"	432	"		do.	13,112¾
" 2	3	"	154	"		do.	4,673¾
" 6	4	"	201	"		do.	6,091¾
" 10	2	"	100	"		do.	2,988½
" 13	2	"	100	"		do.	2,993½
" 15	8	"	472	"		do.	12,311¼
" 16	6	"	342	"		do.	9,254¾

"	20	2	"	109	"		do.	3,099
"	22	5	"	251	"		do.	7,561
		194	"	9,900	"			296,848½
A B of		26 cases,		14	pieces	debege		429½
		27	"	51	"	do.	Ret'd sale, 1/2	1,540½
		28	"	39	"	do.		1,214½
		30	"	39	"	do.		1,188½
		31	"	39	"	do.		1,198½
of		40	"	14	"	do.		411½
		41	"	37	"	do.		1,151½
		46	"	40	"	do.		1,195
of		47	"	14	"	do.		386
		48	"	40	"	do.		1,190½
		49	"	40	"	do.		1,189½
of		42	"	20	"	do.	Ret'd sale, 1/2	589
		69	"	40	"	do.		1,215½
		70	"	40	"	do.		1,179½
		71	"	40	"	do.		1,242½
Carried for'd								

675

EXHIBIT E[111].—Concluded.

Brought for'd								
		72	cases,	40	pieces	debage		1,213½
		73	"	40	"	do.		1,162
		74	"	40	"	do.		1,227½
		85	"	35	"	do.		1,072½
		86	"	35	"	do.		1,114½
		89	"	36	"	do.		1,063
		19	"	734	"			22,175½
9m	29	2	"	80	"		Inv. entire,	2,384½
10m	8	4	"	144	"		do.	4,284½
"	7	5	"	185	"		do.	5,442
"	20	8	"	321	"		do.	9,640
		38	"	1,464	"			43,925½

Memo: Goods on hand, Atlantic De Laine Mf'g Co., 12mo. 31st, 1852.

CASS.

387	2	pieces	plaid cass	57
398	4	"	stripe "	104[2]
399	1	"	" "	18
400	7	"	plaid "	185
411	5	"	stripe "	129
416	9	"	" "	240[1]
417	1	"	plaid "	25[1]
419	5	"	" "	139
422	6	"	old cottony plaids	155
	2	"	stripe cass	53
423	4	"	plaid "	109[2]
426	12	"	stripe "	307
434	2	"	" "	57[2]
	5	"	plaid "	137[1]
	65	pieces		1,717 yards.

Errors excepted.

Case No. 393 does not appear to have arrived. Possibly it may have stopped in New York.

393, 13 pieces, 359[3]

PHILADELPHIA, 12mo. 13st, 1862.

676 EXHIBIT F.—F. A. D., *Examiner.*

Statement of the Atlantic De Laine Co., Jan'y 1st, 1853.

Bills payable	410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

CR.

Cash and bills receivable on hand	13,584 92
Cost of real estate, cassimere department, and amount Chas. T. James, contract-account	310,006 04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

I would state, our directors estimate that $50,000 or more of the above balance accrued from the non-fulfilment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

(Signed) GEO. W. CHAPIN, *Treasurer.*

PROVIDENCE, *Feb'y 26th*, 1853.
S. C. B.

677 EXHIBIT G.—F. A. D., *Examiner.*

Know all men by these presents, that I, Charles T. James, of the city and county of Providence, in the State of Rhode Island, for and in consideration of the sum of seventy-five thousand dollars, to me paid by George W. Chapin, of said city of Providence, as trustee of Hill, Carpenter & Co. and of the Globe Printing Company, of said Providence; of Hoyt & Tillinghast, of the city of New York; of Hacker, Lee & Co., of the city of Philadelphia; and of Dodge, Tucker & Co., of Boston, the receipt of which sum is hereby acknowledged, have given, granted, bargained, sold, assigned, transferred, and set over, and do by these presents give, grant, bargain, sell, assign, transfer, and set over to him, the said George W. Chapin, as trustee as aforesaid, his heirs and assigns forever, all my right, title, and interest in and to the capital stock of the Atlantic De Laine Company, a corporation incorporated by the general assembly of said State, and in and to all the real and personal estate of the said corporation, whether the same be held by said corporation or by any person or persons in trust for them, and in and to all the real estate situate in the town of North Providence, in said county, and in and to the personal property and estate held by me, the said Charles T. James, and the said Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lee & Co., and Dodge, Tucker & Co., and others, either as trustees or as tenants in common, or by any other person in trust for me and them and others.

To have and to hold the same, with all the rights, privileges, and appurtenances thereof or thereunto appertaining, to him, the said George W. Chapin, as trustee as aforesaid, his heirs and assigns forever. Provided always—and this deed is upon the express condition—that whereas I, the aforenamed Charles T. James, have this day made and executed my certain negotiable promissory note, bearing even date herewith, and made payable to George W. Chapin, as trustee as aforesaid of Hill, Carpenter & Co., of the Globe Printing Company, of Hoyt & Tillinghast, of Hacker, Lee & Co., and of Dodge, Tucker & Co., or order, in twelve months after date, with interest thereon, for the
678 sum of twenty-five thousand dollars. And whereas they, the aforenamed Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lee & Co., and Dodge, Tucker & Co. have also agreed to make, execute, and deliver to me, the said Charles T. James, their certain negotiable promissory notes, all to be made payable to me, the said Charles T. James, or order, of even date herewith, and payable in six months after date, to the amount of fifty thousand dollars, and have also agreed that on the maturity thereof they will, at my request, renew the same for a farther term of six months, the payment of which said notes, so made and executed by them, and also the payment of such other notes as may be hereafter made and executed by them in renewal, as aforesaid, being assumed by me, the said Charles T. James, said notes to be signed by the said George W. Chapin, as trustee as aforesaid, with privilege of payment before maturity.

Now, therefore, if I, the aforenamed Charles T. James, or my heirs, executors, or administrators, or any other person for me or them, shall well and truly pay, or cause to be paid, the aforenamed notes, with the interest thereon, and at or before their maturity, according to tenor, and shall also, at all times, forever hereafter, indemnify and save them, the said Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lee & Co., Dodge, Tucker & Co., their heirs, executors, administrators, and assigns, harmless of and from any payment for or on account of said notes so made and given by them, or which may hereafter be given by them in renewal as aforesaid, and of and from all loss and damage, interest, costs, and expenses arising from and out of or by reason of said notes, so given, or that may hereafter be given, in renewal as aforesaid, then this deed is to be void; but otherwise to be and remain in full force and effect.

Furthermore, I, the aforenamed Charles T. James, do hereby constitute and appoint the aforenamed George W. Chapin, his executors, administrators, and assigns, my true and lawful attorney or attorneys irrevocable, with full powers of substitution and of revocation, for me and in my name, or in his or their name or names, at any time, in case default shall be made in the payment of any note or notes hereby secured, and such default shall continue for the term of six months, to sell at public auction the whole or any part or portion of the afore-
679 granted premises, he or they first giving, after the expiration of said term of six months, twenty days' notice of such sale in some one of the public newspapers printed in said city of Providence, and in my name, or in his or their name or names, to make, execute, seal, acknowledge, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds, or other conveyances thereof, so as to vest in such purchaser or purchasers as full a title thereto as is hereby conveyed; and, on sale thereof, (hereby giving and granting unto my said attorney or attorneys full power, and authorize to adjourn or continue said sale from time to time,) I do authorize my said attorney or attorneys to re-

ceive of and from the purchasers thereof the amount the same shall be sold for, and, after the payment of all the expenses incident to such sale or sales, to apply and appropriate the residue thereof to the payment of the amount due on such note or notes as are hereby secured, accounting to me, my heirs, or assigns for all sums over and above the amount thereof, I hereby ratifying and confirming such sale or sales as may be made or caused to be made by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this first day of August, in the year of our Lord one thousand eight hundred and fifty-one.

CHARLES T. JAMES. [L. S.]

Signed, sealed, and delivered in presence of (the words "and at or before their maturity" being interlined, the words "thirty days" being erased in two places, and the words "six months" to be interlined above the erasure.)

HENRY MARTIN.

PROVIDENCE COUNTY, *sc.:*

In Providence, this fifth day of August, A. D. 1851, then Charles T. James personally appeared before me, and acknowledged the preceding instrument by him signed to be his free act and deed.

HENRY MARTIN,
Justice of the Peace.

Lodged for record August 5, 1851, at 2½ o'clock p. m.
Recorded. Attest:

J. H. WEEDEN,
T. Clerk,
Per CHAS. M. READ.

TOWN CLERK'S OFFICE, NORTH PROVIDENCE,
September 24, 1872.

I certify that the aforegoing is a true copy as appears of record in this office.

[Stamp.]

ROYAL LEE,
Town Clerk.

680 EXHIBIT H.

DR. (*Copy.*) *Trial balance Atlantic De Laine Co., December 31st,* 1852. CR.

Cash	5	5,326 96	Bills payable	19	410,615 39
Bills receivable	13	8,257 96	Globe Printing Co	30	888 12
Real estate	28	13,140 60	Day, Owen & Co	49	1,564 39
Albert Dailey	39	1,900	Geo. W. Chapin, trustee	71	8,524 30
Atlantic De Laine Mill	42	9,364 40	Hacker, Lea & Co	75	31,296 37
L. B. Frieze, assignee	47	53,314 77	S. C. Blodgett	76	50
C. T. James, cont. account	50	256,615 11	Dodge, Tucker & Co	77	22,767 41
Cotton account	56	3,642 98	Thurston, Greene & Co	79	399 56
Construction account	60	40,250 33	Hoyt, Tillinghast & Co	80	34,398 02
Cassimere account	62	12,680 23	Hill, Carpenter & Co	81	41,542 46
De Laine account	64	237,062 87	Hoyt & Tillinghast	400	25,000
Prov. S. & Gas Pipe Co.	84	161 38	Hacker, Lea & Co	402	25,000
Wool account	85	147,823 96	Globe Printing Co	404	25,000
			Hill, Carpenter & Co	406	30,000
			Chas. T. James	408	113,000
			Dodge, Tucker & Co	410	15,000
			Harrison & Co	412	495 53
			Day, Owen & Co	414	3,000
			Nath. P. Bartlett	416	1,000
		$789,541 55			$789,541 55

681 EXHIBIT I.—F. A. D., *Examiner.*

At a meeting of the subscribers to the stock of the Atlantic De Laine Company, called in accordance with the 7th section of the act of incorporation, and held at the office of the Globe Printing Company, on Thursday, May 22, 1851, the following-named gentlemen were present: Charles T. James, Josiah Chapin, Paris Hill, Joseph Lea, Alanson Tucker, jr., William Brenton Greene, Joseph Carpenter, George W. Chapin.

The meeting was duly organized by appointing Charles T. James moderator, George W. Chapin, clerk.

The charter of incorporation having been read, it was voted unanimously that the same be accepted.

A code of by-laws having been presented and read by the clerk, it was voted unanimously that the same be adopted as the by-laws of this corporation.

Voted, That the charter and by-laws above accepted and adopted be printed. A committee of nomination having been appointed by the chair, the following-named gentlemen were nominated and unanimously elected officers of the corporation, to serve until the annual meeting in February next: Josiah Chapin, president; George W. Chapin, treasurer; Charles T. James, Joseph Carpenter, Joseph Lea, William Brenton Greene, George W. Chapin, directors; Benjamin L. Bourn, clerk.

Voted, That the sum of one thousand dollars be, and hereby is, assessed upon each share of the capital stock of this corporation, to be paid to the treasurer when he shall deem it necessary.

EXHIBIT J.—F. A. D., *Examiner.*

Copy of by-laws adopted by the Atlantic De Laine Company, May 22, 1851.

ARTICLE 1st. The capital stock of the Atlantic De Laine Company shall be three hundred thousand dollars, divided into three hundred
682 shares of one thousand dollars each, until the same shall be increased by vote of the corporation. No certificate shall be issued for less than one share.

ARTICLE 2d. The officers of the corporation shall consist of a president, who ex officio shall be a director, five directors, a treasurer, and clerk, to continue in office one year, and until their successors are chosen and qualified, except in case of death, resignation, or removal.

ARTICLE 3d. All officers except the clerk shall be stockholders at the time of their appointment. When they cease to be stockholders their office shall determine. In case of any vacancy occurring, the directors may appoint some one of the stockholders to fill such vacancy until the next annual meeting. All elections shall be made viva voce, unless a majority present desire a ballot vote.

ARTICLE 4th. It shall be the duty of the president to preside at all meetings of the corporation and of the directors; to sign all certificates which may be issued for shares held in the common property—all which certificates shall also be signed by the treasurer; and to perform such other duties as may from time to time be committed to him by the corporation.

ARTICLE 5th. It shall be the duty of the directors to superintend the prudential concerns of the corporation; to purchase such kinds of property and estate as they may deem for the interest of the corporation to possess, at such rates and upon such terms as to them may appear advisable, and the same to improve and manage, and to make, in behalf of

the corporation, all contracts and agreements needful for any and all purposes authorized by their act of incorporation, and generally to transact, manage, and attend to the business of the corporation in all cases. They shall have power to fix the salary of the treasurer and define his duties, and give him their counsel and advice, from time to time, as he may require or they may deem necessary. They shall keep a record of all their proceedings, and at each annual meeting give a summary account of their management during the preceding year, and at all other times when required by stockholders representing one-third of the capital stock. It shall be their duty to declare such dividends of the profits to the stockholders, to be paid on their respective shares, half yearly, as the condition of the affairs of the corporation will, in their opinion, permit.

683 Meetings of the directors shall be called by the treasurer, or, in his absence, by the president, at the request of any one of the board, by giving notice to each by mail or telegraph at least two days before the time appointed for said meeting. At any such meeting three shall constitute a quorum for the transaction of business.

ARTICLE 6th. It shall be the duty of the treasurer to receive and pay all moneys, collect all debts and demands, and, as general factor or agent, to have the care and oversight of the affairs of the corporation; and, with the advice and consent of the directors, shall have power to contract debts in behalf of the corporation, draw drafts and sign notes. And, with the advice and consent of the directors, shall fix the compensation of all persons employed in the business of the corporation; and hire and employ at his pleasure such as he may deem essential to carry on the work of the corporation, and discharge the same when no longer wanted. He shall purchase stock and generally do and perform all matters, acts, and things which appertain to the duties of treasurers and agents of manufacturing corporations—but subject at all times to the oversight and control of the board of directors. It shall be his duty to issue certificates of shares, as prescribed in the by-laws, and to keep a book (which shall be taken as a part of the records of the corporation) in which he shall register the names of all the stockholders, the number of shares held by each, and all transfers of shares. He shall keep the common seal of the corporation, and their deeds and valuable papers. He shall require all the agents of the corporation to render him account of their proceedings. He shall keep his account as treasurer in a correct manner, and the same, with the account of the agents, he shall render to the directors semi-annually, and at all other times when required; and at each annual meeting he shall exhibit his account to the corporation. He shall collect all assessments made by vote of the stockholders, and faithfully carry into effect all such instructions as may be given him by the corporation or directors. He shall deposit the funds of the corporation in such banks as the directors may from time to time direct, in the name of the corporation, and check for the same on treasurer.

684 ARTICLE 7th. It shall be the duty of the clerk to attend meetings of the corporations, and to keep a fair and correct record of all the votes and proceedings thereof.

ARTICLE 8th. All meetings of the corporation shall be called by the treasurer, at least six days prior to said meeting, by depositing notice thereof in the post-office at Providence, addressed to each stockholder, or by leaving them at their place of business or abode.

ARTICLE 9th. The corporation shall have a common seal, with such device as shall be selected by the directors.

ARTICLE 10th. The certificates of shares of the corporation shall be in the following form:

No. . ATLANTIC DE LAINE CORPORATION. Shares.

Be it known, that of , proprietor of shares of the capital stock of the Atlantic De Laine Company, transferable only in person or by attorney, on the transfer-book of said corporation, on the surrender of the certificate.

In witness whereof the seal of the corporation is hereunto affixed, at Providence, this day of 18 .

, *Treasurer.* , *President.*

ARTICLE 11th. These by-laws, or any of them, may be repealed, amended, or enlarged at any meeting of the stockholders when three-fourths of the shares are represented, but not otherwise.

EXHIBIT K.—F. A. D., *Examiner.*

(Copy.)

ATLANTIC DE LAINE COMPANY.

No. 1. PROVIDENCE, R. I., *March* 9, 1853.

For value received the undersigned transfers to the Atlantic De Laine Company and George W. Chapin, trustee, 113 shares of the capital stock of the Atlantic Delaine Company, numbered as by margin.*

(Signed) L. B. FRIEZE,
Assignee of Charles T. James.

Witness: (Signed) ROBERT E. NORTHAM.

* One hundred and thirteen shares, No. 125 to 237.

685 EXHIBIT L.—F. C. D., *Examiner.*

Know all men that we, Josiah Chapin and George W. Chapin, of the city and county of Providence, State of Rhode Island, and William C. Chapin, Tiverton, in said State, all composing the form of the Globe Printing Company; Edwin Hoyt, Philip Tillinghast, William B. Greene, of the city of New York, and Nehemiah Knight, of Brooklyn, New York, all doing business in New York under the form of Hoyt & Tillinghast; Thomas T. Lea, Joseph Lea, and Thomas Kimber, jr., of the city of Philadelphia, State of Pennsylvania; and Francis W. Hemsly, and Abijah E. Stephens, and Isaac Hacker, also of the city of Philadelphia, all transacting business, in the said city of Philadelphia, under the name and form of Hacker, Lea & Company; Joshua C. Dodge, Alanson Tucker, jr., and Lewis Mills, all of Boston, in the State of Massachusetts, there transacting business under the form of Dodge, Tucker & Company; Paris Hill, Joseph Carpenter, and William J. Cross, all of the said city of Providence, there transacting business under the form of Hill, Carpenter & Company; and said George W. Chapin, as trustee of Hill, Carpenter & Company, the Globe Printing Company, of Hoyt & Tillinghast, Hacker, Lea & Company, and of Dodge, Tucker & Company, and also as attorney for others, do hereby, each for ourselves personally, and also for our said co-partnerships and companies, remise, release, and forever quit-claim unto Charles T. James, of the said city and county of Providence, his heirs, executors, and administrators, all

claims and demands of every kind and nature which we, or any or either of us personally, or said forms or companies, or which said George W. Chapin as trustee and also as attorney of any persons, now have or ought to have against said James, for or on account of a certain contract bearing date the first day of January, A. D. 1851, entered into by and between Messrs. Hill, Carpenter & Company and George W. Chapin, and said George W. Chapin, as attorney for others, of the first part, and said Charles T. James, of the second part, for the erecting of the
686 De Laine Mill (so called) at Olneyville, near said Providence, and of and from all claims for damages for any alleged non-performance of said contract, and from or on account of anything therein contained, or in any wise arising therefrom; and also hereby releasing, quitclaiming, and discharging, for ourselves individually and for said forms and companies, and as trustee and attorney for others, said Charles T. James, his heirs, executors, and administrators, of and from all and all manner of actions, causes of actions, debts, dues, claims, and demands of every kind and nature whatsoever, both in law and at equity, which, against said Charles T. James, we, the persons, forms, and companies hereinafter mentioned, severally and individually, or said forms, or any or either of us personally, or any or either of said forms or companies, or said George W. Chapin, as trustee as aforesaid, and as attorney as aforesaid, ever had, now have, or ought to have, for or by reason or means of any matter, cause, or thing, from the beginning of the world to the day of the date of these presents, saving and excepting only as is hereinafter provided, namely:

Whereas the said Charles T. James heretofore made and executed to the said George W. Chapin, as trustee of Hill, Carpenter & Company, and of the Globe Printing Company, of Hoyt & Tillinghast, of New York, of Hacker, Lea & Company, of Philadelphia, and of Dodge, Tucker & Company, of Boston, a certain mortgage-deed bearing date the first day of August, eighteen hundred and fifty-one, of all his right, title, and interest in and to the capital stock of the Atlantic De Laine Company, a corporation created by the general assembly of Rhode Island, and in and to all the real and personal estate of said corporation, to secure the payment of the sum of seventy-five thousand dollars, which said mortgage-deed is recorded in the registry of deeds in the town-clerk's office in North Providence, in book number 17, page 208, reference thereto being had; which said sum of seventy-five thousand dollars was also secured by other mortgages of the same date, executed by said James to said Chapin as trustee as aforesaid, on his Chopequonsett farm (so called) in Warwick, and on his homestead estate in Providence, and on his farm in Scituate, and also by the pledge of fifty thousand dollars in bonds of the Cannelton Manufacturing Company
687 in Indiana. And whereas the said Chapin, as trustee, has received, out of the sales of property so pledged and mortgaged toward said mortgage debt, about the sum of forty thousand dollars, and leaving about the sum of forty-one thousand dollars due and unpaid on said mortgage. And whereas the persons aforenamed as trustees in and interested in said mortgages, are willing to look to the interest of said James in the capital stock of the Atlantic De Laine Company in said mortgage mentioned, for the payment of the said balance due on their said mortgage, without pursuing said James personally, or having any recourse to said James personally therefor. And whereas the evidences of said mortgage debt are a certain note specified in said first-named mortgage, date August first, A. D. 1851, signed by said James, and payable twelve months after date, with interest, to George W. Chapin,

as trustee of Hill, Carpenter & Company, the Globe Printing Company, of Hoyt & Tillinghast, of Hacket, Lea & Company, and of Dodge & Company, for the sum of twenty-five thousand dollars, and also by the following described drafts or bills of exchange, all dated the first day of August, A. D. 1851, and all drawn by George W. Chapin, trustee as aforesaid, and all payable to the order of said James at six months; namely, two drafts drawn on Hill, Carpenter & Company for five thousand dollars each, and one other drawn on them for five thousand five hundred dollars; one draft drawn on Hoyt & Tillinghast for five thousand four hundred and sixteen dollars and sixty-seven cents; one other drawn on them for five thousand dollars; one draft drawn on Hacker, Lea & Company for five thousand dollars, and one other draft drawn on them for five thousand four hundred and sixteen dollars and sixty-seven cents; one draft drawn on Dodge, Tucker & Company for three thousand dollars, and one other draft drawn on them for three thousand two hundred and fifty dollars; one draft drawn on the Globe Printing Company for five thousand dollars, and one other draft drawn on the Globe Printing Company for five thousand four hundred and sixteen dollars and sixty-six cents.

Now, in order to accomplish the above expressed purpose only, and effectually to make good this release to said James in every other respect, we, the said Josiah Chapin, William C. Chapin, George W.
688 Chapin, the Globe Printing Company, Edwin Hoyt, Philip Tillinghast, Nehemiah Knight, and William B. Greene, and Hoyt & Tillinghast, Thomas T. Lea, Isaac Hacker, Joseph Lea, Thomas Kimber, jr., Francis W. Hemsley, and Abijah E. Stephens, and Hacker, Lea & Company, and Joshua C. Dodge, Alanson Tucker, jr., and Lewis Mills, and Dodge, Tucker & Company, Paris Hill, Joseph Carpenter, and William J. Cross, and Hill, Carpenter & Company, and I, said George W. Chapin, in my said capacity as trustee, and also as attorney as aforesaid, do hereby, all jointly and each severally and individually, and said copartnerships and companies for ourselves severally, and for our several and respective heirs, executors, and administrators, covenant and agree to and with the said Charles T. James, his heirs, executors, and administrators, that we, or some one or more of us, are now the holders and owners of the aforesaid mortgage-note for twenty-five thousand dollars, and also of all the drafts aforementioned, and of all the debts secured in and by said first-mentioned mortgage, and also of all the evidences thereof, whether the same be correctly described herein, or described at all herein, or not. And we all and each, and said forms and companies, for ourselves, our respective heirs, executors, and administrators, do hereby further covenant and agree to and with said Charles T. James, his heirs, executors, and administrators, that no suit or suits, or action or actions at law or equity, or any proceedings of any kind or nature, shall be in any wise brought, commenced, or prosecuted by us, or by any or either of us, or by said George W. Chapin, as trustee or as attorney as aforesaid, or by any other person or persons whatsoever, against said Charles T. James, his heirs, executors, or administrators, or against his or their estate or property, (other than the property described in the said mortgage on said De Laine Mill,) on all or any or either of the said evidences of said mortgage-debt, or on or for said mortgage-debt, or on or for any part or portion thereof, in any way or manner, at any time during and within the space of one hundred years next after the date hereof. We, said persons, firms, and companies, jointly and severally, and for our respective heirs, executors, and administrators, hereby covenanting with said James, his heirs, executors, and administrators, that we, and that the

holders of said first-mentioned mortgage-debt and mortgage,
689 will hold and look and resort to the estate described in said mortgage, and to that only and alone, for the residue of the debt thereby secured; and we, the persons aforenamed, all and each, do hereby further covenant and agree, severally and jointly, and for our respective heirs, executors, and administrators, to and with said Charles T. James, his heirs, executors, and administrators, that we and each of us will, at all times hereafter, indemnify and save harmless, in every respect, the said Charles T. James, his heirs, executors, and administrators, of and from and against all and every and any action, suit, and proceedings, of every kind and nature, which may at any time hereafter, and from time to time, be brought, commenced, or prosecuted against him, said James, his heirs, executors, or administrators, or against his or their property or estate, by any person or persons or forms or corporations whatsoever, on all or any or either of said notes, drafts, or bills of exchange, or on any evidences of any of the mortgage-debt aforesaid, or for or on account of, or by reason of, said mortgage-debt or any part or portion thereof, so as aforesaid secured under or by the mortgage herein mentioned, including in this indemnity all costs, charges, and expenses of every kind and nature whatsoever, holding good and effectual this release in every respect, excepting only as herein excepted. And whereas said Hoyt & Tillinghast claim to have a claim on said Charles T. James for about eight thousand three hundred and ninety-five dollars and two cents, as a guarantee of two bills of cotton charged to the Montauk Manufacturing Company, on Long Island, New York, made about the fifteenth day of March, A. D. eighteen hundred and fifty-one; and said James denies any liability to them therefor, now it is understood between said Hoyt & Tillinghast and said James, that this last-mentioned supposed claim is not included in this release, nor is the mention and exclusion of it here to be construed as an admission of any such pretended claim or liability in any way or manner on the part of said James; but, in respect to this last-mentioned claim, the rights, obligations, and liabilities of said Hoyt & Tillinghast and said James are to remain entirely unaffected by this instrument, and the same as if it had not been executed. And whereas, also, there are three several promissory notes, all signed by said
690 Charles T. James, and all payable to Lyman B. Frieze, or order, (one dated August 29, A. D. 1851, for five thousand dollars, at four months; one, dated August 1, A. D. 1851, for three thousand five hundred and seventy-five dollars and fifty-six cents, at three months; and the other dated August 1, A. D. 1851, for three thousand two hundred and fifty-seven dollars and ninety-six cents, at four months,) and all now owned by said Hill, Carpenter & Company and the Globe Printing Company, and it is understood by and between said Charles T. James and said Hill, Carpenter & Company and the Globe Printing Company, that whatever claims they have on said James, on said three last-mentioned notes, are not embraced in this release, but are to remain in every respect as though this release had not been executed, holding good and effectual this release in every respect, excepting only as is hereinbefore excepted.

In testimony whereof we have hereunto set our hands and seals, this

second day of March, in the year of our Lord one thousand eight hundred and fifty-three.

(Signed)
JOSIAH CHAPIN. [L. S.]
WM. C. CHAPIN. [L. S.]
GEO. W. CHAPIN. [L. S.]
GLOBE PRINTING CO.,
W. & G. CHAPIN, *Agents.* [L. S.]
EDWIN HOYT. [L. S.]
PHILIP TILLINGHAST. [L. S.]
NEHEMIAH KNIGHT. [L. S.]
WM. BRENTON GREENE. [L. S.]
By consent of each partner: HOYT & TILLINGHAST. [L. S.]
THO. T. LEA. [L. S.]
ISAAC HACKER. [L. S.]
JOS. LEA. [L. S.]
THOS. KIMBER, JR. [L. S.]
F. W. HEMSLEY. [L. S.]
A. E. STEPHENS,
By F. W. HEMSLEY, *Attorney.* [L. S.]
By consent of each partner: HACKER, LEA & CO. [L. S.]
PARIS HILL. [L. S.]
JOSEPH CARPENTER,
By PARIS HILL, *Attorney.* [L. S.]
By consent of each partner: HILL, CARPENTER & CO. [L. S.]
J. C. DODGE. [L. S.]
ALANSON TUCKER, JR. [L. S.]
LEWIS MILLS. [L. S.]
By consent of each partner: DODGE, TUCKER & CO., [L. S.]
GEO. W. CHAPIN, *Trustee and Attorney.* [L. S.]

691 Signed, sealed, and delivered in presence of (the words "saving and excepting" and "George W. Chapin" being first interlined)—

CHARLES H. PIERCE, witness to the signature of Wm. C. Chapin.

GEO. W. MONRO, witness to the signature of Josiah Chapin, Geo. W. Chapin, and Globe Printing Co.

The undersigned witnessed the signatures of Edwin Hoyt, Philip Tillinghast, Nehemiah Knight, Wm. Brenton Greene, and Hoyt & Tillinghast,

EDWARD O. BURLING.

The undersigned witnessed the signatures of Thomas T. Lea, Isaac Hacker, Joseph Lea, Thomas Kimber, jr., Francis W. Hemsley, Abijah E. Stephens, and Hacker, Lea & Co.,

MORRIS HACKER.

JOSEPH BURROUGH, witness to the signatures of Paris Hill, Paris Hill, attorney for J. Carpenter, Wm. J. Cross, and Hill, Carpenter & Co.

Witness to signatures of J. C. Dodge, Alanson Tucker, jr., Lewis Mills, and Dodge, Tucker & Co.,

W. H. MACINTOSH.

Witness: GEO. W. MONRO.

EXHIBIT M.—F. A. D., *Examiner.*

Petition.

WASHINGTON, *sc:*

To the supreme court of Rhode Island, in session in South Kingstown.

Respectfully shows, Lyman B. Frieze, of Providence, that he is the assignee for the benefit of creditors of Charles T. James, of said Providence; and that in his said character of assignee as the owner in trust of the equity in redemption in certain estates, mortgaged by the said James, he has brought a suit in equity in the supreme court, in the county of Providence, against George W. Chapin, of Providence, trustee of Hill, Carpenter & Co., the Globe Printing Company, being Josiah Chapin, George W. Chapin, and William Chapin, Hoyt & Tillinghast, of New York City, Day, Tucker & Co., of Boston, Hacker, Lee & Co., of Philadelphia, as one defendant, and the Atlantic De Laine Company, a corporation created by the general assembly of Rhode Island, as a co-defendant, having filed his bill of complaint therein, in the clerk's office of said court, as by certificate hereto appended appears; and that in his said bill of complaint, he sets forth and complains
692 (in part) as follows, to wit: That the said James, at a certain time, contracted with the said George W. Chapin, at that time the agent and attorney duly constituted and authorized of the persons and firms above named; as also of said James and Day, Owen & Co., of Hartford, Conn., to make certain erections, and furnish therefor certain machinery, for the price of $260,000; that the said James performed his said contract, and also, at the request of the parties, expended money, performed labor, and furnished materials and machinery in addition to, and extra of, said contract, as the said James and the petitioner claim, to the amount of fifty-five thousand dollars; that the parties to said contract obtained, from the general assembly of Rhode Island, an act of incorporation, as the Atlantic De Laine Company, one-half of the stock of which the said James took and became owner of—the said half being of the estimated value at par of $150,000; that on the 1st of August, 1854, said James, to secure the payment of a loan of $75,000 to him made by the parties to the aforesaid contract, made and executed to the said George W. Chapin, as trustee as aforesaid, three several mortgages, embracing his mansion-house estate in Providence, his Warwick or Chappequansett farm, a farm in Scituate, all his capital stock in the aforesaid corporation, and interest in its real and personal estate, and all his property in North Providence, and also, as further necessity for said loan, placed in said Chapin's hands bonds of the Cannelton Manufacturing Company, to the value, at par, of $50,000; that towards the payment of the said loan of $75,000, about the sum of $30,000 has been realized from the said Cannelton bonds and the said Warwick farm, and that the other property aforesaid, still held under mortgage, is greatly more than sufficient to pay the balance of said loan; that the said corporation has been for about eighteen months prosecuting the business of manufacturing; that he has repeatedly endeavored to obtain from its officers a statement of the condition of its affairs, to the end that he might make sale of the said James' stock at its just value, but neither by oral or written requests and applications has he been able to obtain any reliable statement of its condition; that said defendants pretend and represent that said company has suffered heavy losses, that thereby this petitioner may be prevented from obtaining for the said
693 James' shares therein their just value, whereas, did they fully and fairly disclose the condition of said company's affairs, it

would appear that such heavy losses had not been incurred or had been made up by subsequent gains, and that said shares are really of great value; that by the charter of said company, the stock of each member is held pledged for his debts to the company; that the said Chapin and the persons for whom he is attorney, as aforesaid, as respects said contract, and of whom he is the trustee as aforesaid, as respects the mortgages aforesaid in writing, as treasurer of said company, agreed with this petitioner in June, 1852, to refer to arbitrators the adjustment of the aforesaid claim of said James for extra work and outlays, as aforesaid, being for an amount greater than the balance still due of the loan aforesaid; which agreement this petitioner understands to be still in force, to be hereafter by the parties carried into effect; that the said defendants have until recently professed a willingness to transfer and assign the mortgages, aforesaid, on the payment of the amount due thereon, but have refused so to do, when requested about the middle of February instant, by your petitioner; and that said Chapin, as trustee under said mortgages, as aforesaid, has advertised all said property to be sold at auction on the 25th and 26th days of February, 1853, as by the advertisements appended appears, which sale, it is averred in said bill, will irreparably injure this petitioner and the creditors whom he represents.

And in which said bill this petitioner, as one part of the prayer thereof, asks that the said Chapin, trustee as aforesaid, may be decreed to assign and transfer said mortgages to any person who will pay the amount still due, he, the petitioner, offering to redeem the same, or to see that the amount due thereon on his transferring and assigning the same, is fully paid; and, as another part, asks that the said Chapin, and all others acting under him, may be enjoined from proceeding with the sale of the property aforesaid. And, further, the petitioner shows and avers that, as he believes, the persons and firms to whom the said Chapin is trustee as aforesaid, in respect to the mortgages aforesaid, are the members of and constitute the said Atlantic De Laine Company, with the addition only of this petitioner in right of said James and Day, Owen &
694 Co., of Hartford, Conn., (which last firm are owners to the amount of only about $3,000,) and that the said persons and firms are the principal managers of the affairs of the said De Laine Company. And, further, he avers that the refusal by said company and its agents to give this petitioner an account of its condition and affairs he believes to be from design on their part to throw a cloud upon the value of this petitioner's shares therein, and prevent his selling the same for a fair price, and deter all persons other than themselves or their confederates from purchasing; that, if the property aforesaid should be sold as advertised before any account of its condition is rendered, the creditors of said James, represented by the petitioner, would suffer irreparable injury, inasmuch as only by the said defendants is the real value thereof known; and by some of them, with a view, as the petitioner believes, to depreciate his shares, it has been represented that the company have lost money by its operations, although to this petitioner others of them, directors of the company, have stated the contrary, and assured him that the stock would very soon prove a good dividend-paying stock; and that such a sale as advertised would be an unjust advantage taken by said mortgagees, aiming not so much to obtain payment of their just debt, already amply secured, as to obtain, directly or indirectly, the property assigned to this petition' at much less than its fair value.

Wherefore your petitioner prays that an injunction may issue forbidding the said George W. Chapin, trustee as aforesaid, and all persons

acting under or with him in this behalf, proceeding to sell the property aforesaid, or any part thereof, under the power in said mortgages granted. And to this end he further prays that a citation may at once issue to said Chapin to appear before this court as soon as may be, to show cause why a writ of injunction, as aforesaid, ought not to be granted.

LYMAN B. FRIEZE,
Assignee of Chas. T. James.

WASHINGTON, *sc:*

AT SOUTH KINGSTOWN, *February* 22, 1853.

Then appeared the above Lyman B. Frieze, signer of the afore-written petition, and made oath that the facts and statements therein set forth as of his own knowledge are true; that the facts and statements set forth as of his own knowledge in the bill in equity therein re-
695 ferred to, and in this petition recited, are true; and those set forth not of his own knowledge he believes to be true.

Before me.

POWELL HELME, *Public Notary.*

Decree for injunction.

Supreme court, February term, A. D. 1853.

WASHINGTON *sc:*

IN THE MATTER OF THE PETITION OF LYMAN B. Frieze, assignee of Charles T. James,
vs.
GEORGE W. CHAPIN, TRUSTEE, AND OTHERS.

And now, upon the reading and hearing said petition and exhibits and proofs of all said parties and their respective counsel, it is hereby ordered, adjudged, and decreed by the said court here, that the said George W. Chapin, trustee and attorney for Hill, Carpenter & Co., the Globe Printing Company, being Josiah Chapin, George H. Chapin, and William Chapin, Hoyt & Tillinghast, of New York; Dodge, Tucker & Co., of Boston; Hacker, Lee & Co., of Philadelphia; and the Atlantic De Laine Company, parties in said petition mentioned, and the said George W. Chapin individually be, and they and each and all of them hereby are, enjoined and prohibited by this court from further proceeding by themselves, their servants or agents, in any manner to sell any of the capital stock of said Atlantic De Laine corporation in said petition mentioned, or any other of the estate or property, real or personal, of said Atlantic De Laine Company, with and by virtue of any power of sale contained in a certain mortgage executed by said Charles T. James, assignor, as aforesaid, bearing date the first day of August, A. D. eighteen hundred and fifty-one, to said George W. Chapin, trustee of the persons and parties in said petition mentioned, including in said mortgage all said power, their right, title, and interest in the capital stock of said Atlantic De Laine Company, and all his right, title, and interest in and to all the estate and property of said corporation, and also in North Providence, hereby enjoining said Chapin, as trustee, as aforesaid, his servants and agents and the parties aforesaid from further proceeding to enforce the power of sale in said mortgage, or to sell any of said stock, estate, or property formerly of said James in said
696 Atlantic De Laine Company, until the further order of this honorable court, or some one of the justices thereof. To be entered.

R. W. G., *C. J. S. C.*
GEORGE A. BRAYTON, *J. S. C.*

Motion to dissolve injunction.

To Hon. R. W. Greene, Chief-Justice Supreme Court.

L. B. FRIEZE, ASSIGNEE, &C.,
vs.
GEORGE W. CHAPIN, TRUSTEE, AND ATLATIC De Laine Co. } In the matter a petition for injunction.

The respondents here move the court for a dissolution of the temporary injunction granted in said cause, and are here ready to show the court that the causes for which said injunction was granted either did not exist in fact or have been removed. Wherefore, they pray the court to cause notice to the petitioner to appear and show cause (if any he have) why said injunction should not be dissolved, and that the same may be dissolved, and as in duty bound will ever pray.

GEORGE W. CHAPIN, *Trustee*,
ATLANTIC DE LAINE COMPANY,
By A. PAYNE, *Their Attorney.*

Hearing adjourned to Newport, on Tuesday, the eighth day of March, 1853, before the court by consent of parties, February 28, 1853.

R. W. G., *C. J. S. C.*

Record of M. T., 1853.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.
Providence, sc:

At the supreme court of said State, begun and holden at Providence, within and for said county, on the fourth Monday of March, in the year of our Lord eighteen hundred and fifty-three.

Be it remembered, that the petition of Lyman B. Frieze, as-
697 signee of Charles T. James vs. George W. Chapin, entered at the present term of this court, is now, on the forty-eighth day of the term, withdrawn without costs.

Memoranda endorsed on petitions by clerks.

Filed second day February term, 1853.

WASHINGTON, *sc:*

In supreme court, February term, 1853, second day.

Ordered, that citation issue to respondents returnable Thursday morning next, at 10 o'clock. Citation g.

P. HELME, *Clerk.*

Received and filed March 5, 1853.

T. S. ANTHONY, *Clerk.*

1853, M. T. 5th day continued nisi. 48th day continuance off. Withdrawn without costs.

E. METCALF, *Clerk.*

acting under or with him in this behalf, proceeding to sell the property aforesaid, or any part thereof, under the power in said mortgages granted. And to this end he further prays that a citation may at once issue to said Chapin to appear before this court as soon as may be, to show cause why a writ of injunction, as aforesaid, ought not to be granted.

LYMAN B. FRIEZE,
Assignee of Chas. T. James.

WASHINGTON, *sc:*

AT SOUTH KINGSTOWN, *February* 22, 1853.

Then appeared the above Lyman B. Frieze, signer of the afore-written petition, and made oath that the facts and statements therein set forth as of his own knowledge are true; that the facts and statements set forth as of his own knowledge in the bill in equity therein re-
695 ferred to, and in this petition recited, are true; and those set forth not of his own knowledge he believes to be true.

Before me.

POWELL HELME, *Public Notary.*

Decree for injunction.

Supreme court, February term, A. D. 1853.

WASHINGTON *sc:*

IN THE MATTER OF THE PETITION OF LYMAN B. FRIEZE, assignee of Charles T. James,
vs.
GEORGE W. CHAPIN, TRUSTEE, AND OTHERS.

And now, upon the reading and hearing said petition and exhibits and proofs of all said parties and their respective counsel, it is hereby ordered, adjudged, and decreed by the said court here, that the said George W. Chapin, trustee and attorney for Hill, Carpenter & Co., the Globe Printing Company, being Josiah Chapin, George H. Chapin, and William Chapin, Hoyt & Tillinghast, of New York; Dodge, Tucker & Co., of Boston; Hacker, Lee & Co., of Philadelphia; and the Atlantic De Laine Company, parties in said petition mentioned, and the said George W. Chapin individually be, and they and each and all of them hereby are, enjoined and prohibited by this court from further proceeding by themselves, their servants or agents, in any manner to sell any of the capital stock of said Atlantic De Laine corporation in said petition mentioned, or any other of the estate or property, real or personal, of said Atlantic De Laine Company, with and by virtue of any power of sale contained in a certain mortgage executed by said Charles T. James, assignor, as aforesaid, bearing date the first day of August, A. D. eighteen hundred and fifty-one, to said George W. Chapin, trustee of the persons and parties in said petition mentioned, including in said mortgage all said power, their right, title, and interest in the capital stock of said Atlantic De Laine Company, and all his right, title, and interest in and to all the estate and property of said corporation, and also in North Providence, hereby enjoining said Chapin, as trustee, as aforesaid, his servants and agents and the parties aforesaid from further proceeding to enforce the power of sale in said mortgage, or to sell any of said stock, estate, or property formerly of said James in said
696 Atlantic De Laine Company, until the further order of this honorable court, or some one of the justices thereof. To be entered.

R. W. G., *C. J. S. C.*
GEORGE A. BRAYTON, *J. S. C.*

Motion to dissolve injunction.

To Hon. R. W. Greene, Chief-Justice Supreme Court.

L. B. FRIEZE, ASSIGNEE, &C.,
vs.
GEORGE W. CHAPIN, TRUSTEE, AND ATLANTIC De Laine Co. } In the matter a petition for injunction.

The respondents here move the court for a dissolution of the temporary injunction granted in said cause, and are here ready to show the court that the causes for which said injunction was granted either did not exist in fact or have been removed. Wherefore, they pray the court to cause notice to the petitioner to appear and show cause (if any he have) why said injunction should not be dissolved, and that the same may be dissolved, and as in duty bound will ever pray.

GEORGE W. CHAPIN, *Trustee*,
ATLANTIC DE LAINE COMPANY,
By A. PAYNE, *Their Attorney*.

Hearing adjourned to Newport, on Tuesday, the eighth day of March, 1853, before the court by consent of parties, February 28, 1853.

R. W. G., *C. J. S. C.*

Record of M. T., 1853.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS.
Providence, sc:

At the supreme court of said State, begun and holden at Providence, within and for said county, on the fourth Monday of March, in the year of our Lord eighteen hundred and fifty-three.

Be it remembered, that the petition of Lyman B. Frieze, as-
697 signee of Charles T. James vs. George W. Chapin, entered at the present term of this court, is now, on the forty-eighth day of the term, withdrawn without costs.

Memoranda endorsed on petitions by clerks.

Filed second day February term, 1853.

WASHINGTON, *sc:*

In supreme court, February term, 1853, second day.

Ordered, that citation issue to respondents returnable Thursday morning next, at 10 o'clock. Citation g.

P. HELME, *Clerk*.

Received and filed March 5, 1853.

T. S. ANTHONY, *Clerk*.

1853, M. T. 5th day continued nisi. 48th day continuance off. Withdrawn without costs.

E. METCALF, *Clerk*.

Agreement for transfer.

L. B. FRIEZE, ASSIGNEE,
vs.
GEO. W. CHAPIN, TRUSTEE, AND ATLANTIC De Laine Co. } Petition for injunction.

It is agreed that the said petition may be transferred to the county of Providence for further proceedings thereon.

A. PAYNE, *for Respondents.*
W. H. POTTER, *Attorney for Petitioner.*

Citation.

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Washington, sc:

To the sheriffs of our several counties, or to their deputies, greeting:

Whereas Lyman B. Frieze, of Providence, in the county of Providence, assignee for the benefit of creditors of Charles T. James, of said Providence, has filed before our supreme court, now in session at South Kingstown, within and for the county of Washington, his petition praying that an injunction may issue forbidding George W. Chapin, trustee of Hill, Carpenter & Company, and others, and treasurer of the Atlantic De Laine Company, and all other persons acting under or with him, from proceeding to sell certain property described in said petition, or any part thereof:

You are therefore hereby required to cite said George W. Chapin
698 to appear before our said supreme court, now in session at South Kingstown, within and for the county of Washington, on Thursday morning next, February 24th, inst., at 10 o'clock a. m., to show cause, if any he have, why said injunction should not be granted. Hereof fail not, and make true return of this writ with your doings thereon.

Witness the Hon. Richard W. Greene, esq., chief-justice of our said court, at South Kingstown, this 22d day of February, A. D. 1853.

POWELL HELME, *Clerk of Court.*

Agreement.

L. B. FRIEZE, ASSIGNEE,
vs.
GEO. W. CHAPIN, TRUSTEE, & ATLANTIC DE Laine Co. } Petition for injunction.

It is agreed that the said petition may be transferred to the county of Providence for further proceeding thereon.

A. PAYNE, *for Respondents.*
W. H. POTTER, *Atty. for Petrs.*

Affidavits.

Washington, sc:

Supreme court, February term, 1853.

LYMAN B. FRIEZE, ASSIGNEE,
vs.
GEORGE W. CHAPIN, TRUSTEE. } In re petition for an injunction.

I, Lyman B. Frieze, on oath declare and say I have repeatedly asked

the said Chapin, trustee of the Atlantic De Laine Company, to furnish me with a statement of the affairs and condition of the company; to which his answer has been, sometimes that it was impossible to give one; sometimes, that it could not be done without a great deal of trouble and labor; and at other times, that until accounts were received from assignors abroad no statement could be made. These applications were made orally. On the 15th of February, however, after the
699 publication of the advertisement of a proposed sale on the 25th of February, I addressed to him a written communication, in the words following: (See copy annexed, A.)

This communication he answered orally, by calling on me at my counting-room for that purpose. In reply, he said he had received my letter, and then in substance said, addressing me, "You know about how it is, as I have told you before. Our goods are in the hands of an agent, and we don't know what they are now worth. Therefore it would now be impossible to make a statement." The said Chapin furthermore asked me at this interview if I wished him to give me an answer in writing, to which I replied, his verbal reply was sufficient, and would do as well as a written one. Mr. Chapin called to see me within two or three hours after he received my letter.

Further, I say I have in my possession, to be produced if requested, one of the two originals of the agreement, under seal, to refer to arbitration the claim of C. T. James for extra work and outlays, referred to in my petition.

LYMAN B. FRIEZE.

Sworn to in open court, fourth day of February term, A. D. 1853.
POWELL HELME, *Clerk.*

A.

PROVIDENCE, *Feb.* 15, 1853.

G. W. CHAPIN, Esq.,
Trustee for Hill, Carpenter & Co., and others, and treas. Atlantic De Laine Company:

DEAR SIR: I feel it my duty to demand of you a statement of the condition, standing, and account of the Atlantic De Laine Company, so that I may be able to represent the delaine stock and which you have advertised, as trustee, to be sold on the 25th and 26th inst., in its true light and value, and make it sell for what it is worth.

Very truly, yours, &c.,
(Signed) L. B. FRIEZE,
Assignee of C. T. James.

A true copy taken by me:

W. E. BOURNE.

700 LYMAN B. FRIEZE
vs.
GEORGE W. CHAPIN ET AL.

I, Nathaniel F. Potter, of the city and county of Providence, on oath depose and say that I called on George W. Chapin, trustee and treasurer of the Atlantic De Laine Co., and inquired of him what the position of the business of that company was, and what amount was due on the mortgage held by him as trustee, with a view to ascertaining the value

of the stock in the De Laine Company, which he had advertised for sale. He said the amounts had not been made up, and he couldn't make any statement about them. I asked if he expected the stock to sell under such circumstances; he said that they should bid the amount of their claim for the stock.

N. F. POTTER.

Feb'y 24, 1853.—Subscribed and sworn to before me.

T. A. JENCKES, *Just. Peace.*

I, Thomas F. Carpenter, of the city and county of Providence, in the State of Rhode Island, on oath declare that I know the following facts, namely: John Paine, of the city of New York, is, and for some time past has been, willing and is now willing and desirous of receiving a transfer and assignment of the several mortgages given by Charles T. James to George Chapin, on the stock of the Atlantic De Laine Co., and other property and estate in said mortgages mentioned, and to pay the full amount of principal and interest and expenses due on said mortgages, for the purpose of preventing a sale and probable sacrifice of said property, by giving time to the assignee of said James to ascertain its true value, and to dispose of the same at its true value. Said John Paine is now in this city, provided with funds to pay all sums due on said mortgages and to receive said transfer; and I, as his agent, am ready and willing to pay said amount, and to take to him from said George Chapin a transfer of said mortgages.

THOS. F. CARPENTER.

701 PROVIDENCE, *Feb'y* 23, 1853.

Sworn to in open court, fourth day of February term, A. D. 1853, Washington County, by Thomas F. Carpenter.

Witness: P. HELME, *Clerk.*

I, William E. Bourn, on oath depose and say: I am nineteen years of age, and am in the employ of Mr. Frieze as a clerk. The copy A of a letter from Mr. Frieze to Mr. Chapin, appended to the affidavit of Mr. Frieze, I made from the original, which I carried, at Mr. Frieze's request, on the day of its date, to Mr. Chapin's counting-room, where I left it for him, he not being within. Within an hour or two after leaving said letter, on entering Mr. Frieze's counting-room, I found there Mr. Chapin, in conversation with Mr. Frieze. The portion of the conversation which I heard related to the making of a statement of the condition of the De Laine Co., which I understood Mr. Chapin to say it was impossible to make on account of variations in the price of goods in market.

Mr. Parkhurst was present also, and, I believe, a Mr. Howland also.

W. E. BOURN.

PROVIDENCE, *Feb.* 23, 1853.

Then personally came W. E. Bourn, signer to the foregoing statement, and made oath that the same is true.

Before me,

BENJ'N N. LAPHAM, *Jus. Peace.*

I, William H. Parkhurst, of Providence, on oath declare and say: I was present in the counting-house of Mr. Frieze, in Providence, which is also my own place of business, on the 15th of February, 1853, in the forenoon, when Mr. George W. Chapin came in and entered into con-

versation with Mr. Frieze. After some little conversation about news, &c., between Mr. C. and Mr. F., Mr. Chapin said to Mr. Frieze that he had just received a communication from him asking for a statement of the De Laine Company's affairs; and then proceeded to say, in substance, he didn't know as he could make a statement; it would be a great deal of trouble to make one; that there were a number of things he could not get at, as they were not definitely settled, and that they had
702 a large quantity of goods on hand, the price of which was fluctuating, and therefore they couldn't fix the amount. After Mr. Chapin had left the room once, he returned and asked Mr. Frieze if he wished a written reply; to which Mr. F. answered, in effect, he didn't know that a written reply was necessary: "You say you can't make any statement and I suppose we must let it stand so;" to which Mr. Chapin seemed to assent, and left the building. And further, I say that until October last I had been conversant for more than a year with the business of C. T. James, whose book-keeper I was; and that I know from conversations with Mr. James, and from entries-books kept by an agent of his, that he claims from the Atlantic De Laine Company a large sum as due him for labor and outlays, extra of his contract with that company. The full amount of that claim I am unable to state.

W. H. PARKHURST.

PROVIDENCE COUNTY, *sc.*

In Providence, this twenty-third day of February, 1853, subscribed and sworn to by William H. Parkhurst. Before me,

HENRY MARTIN, *Public Notary.*

I, George W. Chapin, of lawful age, on oath depose and say that I am treasurer of the Atlantic De Laine Company, and that said company consists of Hoyt, Tillinghast & Co., of New York; Hacker, Lea & Co., of Philadelphia; Dodge, Tucker & Co., of Boston; Harrison & Co., of Baltimore; Day, Owen & Co., of Hartford; Hill, Carpenter & Co., of Providence; The Globe Printing Co., of Providence; and Nathaniel P. Bartlett, of Providence, and Charles T. James, or his assignee, of said Providence. That after the said company was incorporated and organized, a loan was made to Charles T. James by Hoyt & Tillinghast, Hacker, Lea & Co., Hill, Carpenter & Co., and the Globe Printing Co., to secure which loan certain mortgages were made by said James to this affiant, as trustees for the parties making said loan, upon certain estates of the said James, and, among others, upon the interest of said James in the real and personal property of the said Atlantic De Laine Co., which are the same mortgages under which this affiant hath advertised said
703 estates for sale, and that said Atlantic De Laine Co. are not the mortgagees, and have no interest in the loan secured by said mortgages, but the same are held by this affiant solely and exclusively for the benefit of the individuals by whom said loan was made. And this affiant further says that the said Atlantic De Laine Co. are not indebted to Charles T. James, or to his assignee, but, on the contrary, the said James and his assignee are largely indebted to the said Atlantic De Laine Co. And this affiant further says that the amount due upon the mortgages so held by him as trustee is about the sum of fifty-one thousand dollars.

GEO. W. CHAPIN.

Subscribed and sworn to before me this twenty-second day of February, A D. 1853.

CHARLES HART,
Justice of the Peace.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, sc:

CLERK'S OFFICE, SUPREME COURT,
Providence, Oct. 1st, A. D. 1872.

I, Charles Blake, clerk of the supreme court of said State, for the county of Providence, do hereby certify, that the foregoing are true copies of all the papers on file in said office, in the petition in equity, Lyman B. Frieze, assignee, vs. Geo. W. Chapin, including the petition, the decree for injunction, the motion for the dissolution of said injunction, the record in the record-book of said court showing the final disposition of the case, the affidavits on file with the aforenamed papers, the memorandum of the clerk endorsed on said petition, and an agreement for a transfer of the cause to Providence County, together with the citation issued to the respondents, the whole comprising the entire record relative to said suit.

In testimony whereof I hereto subscribe my name and affix the seal of said court this first day of October, A. D. 1872.

CHARLES BLAKE, *Clerk.*

704 EXHIBIT N.—F. A. D., *Examiner.*

THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, sc:

At the supreme court of said State, begun and holden at Providence, within and for said county, on the fourth Monday of March, in the year of our Lord one thousand eight hundred and fifty-three.

NARRAGANSETT BRICK COMPANY
vs.
GEORGE W. CHAPIN ET ALS. } No. 205.

Be it remembered, that at the present term of this court, the Narragansett Brick Company, a corporation created by the general assembly of the State of Rhode Island, &c., transacting business in the city of Providence, in said State, bring this their bill of complaint against George W. Chapin, of said Providence, trustee for Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., and against Charles T. James, of said Providence, and Lyman B. Frieze, of said Providence, assignee of said Charles T. James.

And thereupon your orators complain and say, that on the 12th day of September, A. D. 1851, the said Charles T. James was indebted to them by note, book account, and as acceptor of certain bills of exchange to a large amount, to wit, in the sum of six thousand dollars; and that, being so indebted, the said complainants sued out of the clerk's office of the supreme court for the county of Providence their writ against the said Charles T. James, and caused the same to be served by attaching all the right, title, and interest of the said James in and to certain lots of land, with the building and improvements thereon, situate in the town of Scituate, in said county of Providence, described, referred to, and conveyed to said Charles T. James in and by two certain deeds, the one from Albert W. Harris, bearing date March 19th, 1850, on record in the town clerk's office in said Scituate, in book No. 20, page
511 of the records of deeds, and the other from Syril Cornel, bear-
705 ing date June 10th, A. D. 1851, also on record in said office, in

book No. 21, page 75, of the record of deeds, and also particularly described in the officer's return upon said writ, the said estate being commonly known as the Harvey Phillips farm; a copy of which writ, and of the officer's return thereon, is hereunto annexed and made part of this bill, marked "A." And that the suit so commenced by the said complainant against the said Charles T. James was entered at the March term of said court in said county of Providence, next after the service of said writ, and that a trial was had in the same at the September term of said court, A. D. 1852, and a verdict therein rendered for the said complainants for the sum of six thousand dollars and costs. And your orators further represent that, at the time of the service of their writ in said cause, the interest of the said Charles T. James in the real estate attached was the equity of redemption in said estate, the same being subject to a mortgage executed by the said Charles T. James to George W. Chapin, of said Providence, as trustee for certain persons and firms named therein, as security for certain advances made and to be made to said James by said persons and firms, and for the notes given therefor, as described in the condition of said deed; a copy of which deed is hereto annexed, marked "B," and made a part of this bill.

And your orators further state that the said George W. Chapin, trustee as aforesaid, had, previous to the date of the complainants' attachment, received from the said Charles T. James conveyances of other estate and property by way of mortgage, for the security of the same debts and the same advances secured by the mortgage upon the real estate attached as aforesaid, which said further securities were all made and given at the same time, to wit, on the first day of August, A. D. 1851, and cover a very large amount of property of much greater value than the amount of said mortgage-debt.

And your orators further state that the said George W. Chapin, trustee as aforesaid, has converted a portion of said securities into money, and applied the same to the payment of the said mortgage-debt, and has also received large amounts from the said Charles T. James and the said Lyman B. Frieze, as assignee of said James, which have also largely reduced the claims for which said conveyances were taken as security.

706 And your orators further represent that the said George W. Chapin, trustee as aforesaid, still holds the mortgage-deed upon the real estate attached as aforesaid, and also two other mortgage-deeds upon property of great value, copies of which deeds are hereto annexed, marked C and D, and made parts of this bill.

And your orators further state that, under and by virtue of the power contained in said mortgage-deeds, the said George W. Chapin, trustee as aforesaid, has advertised the estates and property described therein, to be sold at public auction, and has fixed the time of the sale of the real estate attached as aforesaid on Friday, the 25th day of February inst., at 12 o'clock m., on the premises, and the time for the sale of said other estates on Saturday the 26th inst., and has caused said sales to be advertised in the daily newspapers published in the city of Providence.

And your orators further state that the value of the property so mortgaged as aforesaid, and which is thus advertised to be sold, greatly exceeds in value the amount remaining due upon said mortgage-debts; and your orators had well hoped that the said Chapin would have proceeded to make sale, in the first place, of the property not covered by your orators' attachment, and thus have left their security unimpaired, or liable only to the payment of the residue of the mortgage-debt after

exhausting the other securities and applying the proceeds thereof to the payment of the amount secured.

And your orator avers that the greater portion of the property conveyed by said mortgage-deed consists of stock or shares in the Atlantic De Laine Company, a corporation created by the general assembly of the State of Rhode Island, and that one of said mortgage-deeds is a prior and first lien upon said stock and shares; that said corporation has been transacting business for a little more than a year, and has made no settlement of its affairs or of the mode in which its business has been managed or the result of it to its stockholders, although requested, and that said George W. Chapin, trustee as aforesaid, is also treasurer of said corporation, and the persons and firms for whom he holds said conveyances in trust are members of said corporation, and are well acquainted with the value of said stock, and have expressed their intention
707 of bidding the amount of their claim therefor; and the complainants aver that by this course of proceeding purchasers will be deterred from bidding at said sale, and the said property will not realize its true value, and however the times of said sale might be arranged, your orators would be subject to great loss thereby.

And your orators further aver and state that they have learned through the treasurer, Nathaniel F. Potter, of said Providence, many interviews with said Chapin relative to said mortgage-securities and said sales, and have made many propositions to him for the payment of the same and for the indemnification of said trustee and the persons whom he represents, in case of such postponement, all of which propositions have been refused by said trustee; and they further aver that they have proposed to said trustee to purchase their said mortgage debt and securities, and for this purpose they have, by their treasurer aforesaid, called upon said trustee to ascertain a balance due on said debt and said mortgages, but have not been able to learn from him the precise amount he claimed upon the same; that they then endeavored to ascertain the amount from the said James and his said assignee, and after learning about what amount was claimed by said trustee, the complainants caused their said treasurer to call upon said trustee, and to tender him a sum greater than the amount by him claimed to be due upon said mortgage-debt, which said tender was made on the 23d day of February, A. D. 1853, at the office of said Chapin, trustee, as aforesaid, and a transfer of said securities demanded by your orators to them, in order that they might protect their lien upon said estate acquired by the attachment aforesaid, which said sum so tendered by your orators the said Chapin refused to receive and to assign the mortgages aforesaid, and stated that he had been instructed not to transfer said mortgages.

And your orators had well hoped that the said Chapin, trustee as aforesaid, would have converted said securities into money, in the most advantageous manner for all interested therein, and would have postponed the sale of said attached estate until the remainder of said securities had been properly and lawfully converted into money, or at least that the said trustee would have permitted your orators to redeem said attached estate by purchasing the mortgage-debt thereon,
708 and all the other securities therefor, and thus allowed your orators to preserve and maintain their right in the premises; but the said Chapin, trustee as aforesaid, has refused to do each and all of these things, to the injury of your orators; all which acts and doings of said Chapin are contrary to equity and good conscience.

Wherefore, as your orators can have relief only in a court of equity, to the end that the said defendants may make upon oath, full, true, di-

rect, and perfect answer to all and singular the matters herein stated and charged as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated; and that an account may be taken of what, if anything, is due to the said George W. Chapin, trustee, as aforesaid, for principal and interest due on said mortgages, and also of what other securities the said Chapin, trustee as aforesaid, holds for the payment of the same debt, and also what payments have been made, and what securities are held by the several persons or firms mentioned in said mortgage, on account of their proportion of or interest in said mortgage-debt; and also on account of the rents and profits of said mortgaged estates, if any, which have been received by said Chapin, or by any other person or persons by his order, or to his use, or which, without his wilful default or neglect, might have been received; and that your orators may be permitted to redeem said premises, your orators being ready and willing, and hereby offering to pay what, if anything, shall appear to remain due in respect to the principal and interest on said mortgage; and that said trustee may be decreed to transfer and assign to your orators the mortgages aforesaid, upon payment of what may be found due to him thereon, and to deliver over to your orators all deeds and writings in his power or custody, relating to said mortgaged premises, or to said mortgage-debt. And that your orators may have such other and further relief in the premises as to your honors shall seem meet, and as the nature of their case shall require, may it please your honors to grant unto your orators a writ of injunction against the said George W. Chapin, trustee as aforesaid, to restrain him from making sale of all or any portion of said mortgaged premises, and also a writ of subpœna, to be directed to the said George W. Chapin, trustee as aforesaid, Charles T. James, and Lyman
709 B. Frieze, assignee of said James, thereby commanding them to be and appear at a certain day, and under the penalty therein named, before your honors, at the clerk's office of this court at the next rule-day thereof, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order or decree therein as to your honors shall seem meet.

And your orators shall ever pray.

NARRAGANSETT BRICK COMPANY.
N. F. POTTER, *Treasurer.*

T. A. JENCKES,
Solicitor for Complainants.

Petition for injunction.

The Narragansett Brick Company, a corporation created by the general assembly of the State of Rdode Island and Providence Plantations, and located and transacting business in said Providence, petitioning, respectfully represents that they have filed their bill of complaint in the clerk's office of the supreme court for the county of Providence, against George W. Chapin, of said Providence, trustee of Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., against Charles T. James, and Lyman B. Frieze, assignee of said James, in which your petitioners aver that they are creditors of said James to a large amount, to wit, the sum of six thousand dollars; and that, on the 12th day of September, A. D. 1851, they attached certain real estate, situated in the town of Scituate, in said county of Providence, in a suit against the said James; and that said suit, so commenced, is still pending in the supreme court of the county of Providence, and a verdict has once been rendered therein for the

plaintiffs, for the sum of six thousand dollars; and they further set forth that, at the date of the said attachment, the said estate was subject to a mortgage from the said Charles T. James to the said George W. Chapin, as trustee as aforesaid, to secure a certain note for the sum of twenty-five thousand dollars, and certain other liabilities, to the
710 amount of fifty thousand dollars; and that the said Chapin, as such trustee, had received, and still retained, other mortgage-securities for the payment of said mortgage-debt, and that a large portion of said mortgage-debt had been had from the proceeds of other securities; and further setting forth that the said Chapin had advertised the real estate, so attached by your petitioners, for sale, on the 25th inst., under the power contained in his said mortgage, and had also advertised certain other property covered by the other mortgage-securities, to be sold on the following day, the 26th inst.; that said last-named property is of great value, and if fairly sold would bring more than the amount of said mortgage-debt now remaining unpaid; that your petitioners had repeatedly called upon said Chapin, trustee as aforesaid, and requested him to postpone the sale of their attached estate till the other securities held by said Chapin for the same debt should be exhausted, which the said Chapin has refused; and have also endeavored to ascertain from the said Chapin the amount of the balance of said mortgage-debt without success; and that, in order to prevent said sales, and the destruction of their lien on said attached real estate, they have offered to purchase the whole of said mortgage-debt and securities from said Chapin, trustee as aforesaid, and have actually tendered him an amount exceeding the amount claimed by him to be due upon said mortgage-debt, and demanded a transfer of said debt and securities to them, in order that they may protect their lien, obtained by the attachment as aforesaid; which the said Chapin has refused to do, contrary to equity and good conscience, and to the injury of your orators, and with intent to destroy their right in the premises. And they pray in said bill that an account be taken of what may now be due upon said mortgage, and that they may be allowed to redeem the same, and be substituted to all the rights, powers, and privileges of the said trustee under the same.

Now, therefore, your petitioners, being at all times ready and willing to pay whatever sum may be found due in said mortgage debt and securities, and having tendered a sum sufficient to cover the same to said trustee, and being now ready and willing to give such security for the payment of the same as this court may order and direct;
711 and there being, as your petitioners are informed and believe, a dispute between said James and his said assignee, and said Chapin, trustee, as aforesaid, as to the exact amount due on said mortgage debt and securities, which amount will be ascertained and determined under said bill, filed as aforesaid, pray your honors to grant them a writ of injunction against the said Chapin, trustee as aforesaid, restraining him from making sale of any of said mortgaged property, until the hearing and the adjudication of the matters set forth in said bill, or until the further order of the court.

N. F. POTTER, *Treasurer.*

T. A. JENCKES, *Solicitor.*

Interlocutory order.

Upon the petition of the Narragansett Brick Company for an injunction against the sale by the defendant, George W. Chapin, as trustee for certain parties therein named, of certain real estate situate in the city of Providence, and certain real estate in the town of Scituate, and

stock shares, or other interest, in the Atlantic De Laine Co., a corporation located in the town of North Providence, and upon hearing the affidavits filed therewith and the arguments of counsel thereon, it is ordered that an injunction issue against said sales advertised under the powers contained in the mortgages referred to in said petition and bill, unless the said George W. Chapin execute a stipulation and agreement that the said plaintiff's attachment upon the lands in Scituate shall take precedence and priority of the mortgage held by the said Chapin, as trustee, upon the same lands, and such stipulation shall be executed and placed on file to the satisfaction of one of the judges of the supreme court, forthwith; and upon the filing of such stipulation and agreement, the said attachment of the plaintiffs shall have precedence and priority over the mortgage held by said Chapin upon said real estate in Scituate. And the said Chapin, trustee as aforesaid, is hereby perpetually enjoined from making sale of said real estate in Scituate, and upon the filing of said stipulation and agreement, the injunction against the sale of all other property, except the estate in Scituate, be dissolved.

R. W. GREEN,
C. J. S. C.

Feb'y 25, 1853.

712 This cause coming on to be heard at the present term of this court, came on to be heard upon the bill and exhibits and affidavits therewith filed; and, upon the petition for injunction filed therein, and heard by the chief-justice in vacation, and upon the order thereon made, and upon proof satisfactory to the court that said order has been complied with, and upon the written consent of the said defendants;

It is ordered, adjudged, and decreed that the order and decree made by the hon. chief-justice be confirmed and established as the decree of this court, and that the precedence and priority therein decreed to the attachment of the complainants over the mortgage of the defendants, upon the real estate of the said Charles T. James, in Scituate, be confirmed and established, and the injunction granted in said decree is hereby made perpetual upon the terms and conditions required by said decree. And it is further ordered that neither party recover costs in said cause. Let the above decree be entered of record.

LEVI HAILE,
Jus. Sup. Court.
GEO. A. BRAYTON,
Jus. Sup. Court.

T. A. JENCKES, *For Compl'nts.*
AMES AND PAYNE, *For Resp'ts.*

Which decree is accordingly entered as the decree of court on the 51st day of the term.

Supreme court, March term, A. D. 1853.

Bill in equity.

NARRAGANSETT BRICK COMPANY
vs.
GEORGE W. CHAPIN, TRUSTEE, &C.

Petition in equity, (Narragansett Brick Co. vs. George W. Chapin, trustee, &c.,) founded upon said bill, and praying for an injunction, &c.

The said George W. Chapin, trustee, &c., and respondent in said bill

and petition, for himself and for his cestuis que trust, and for his and their respective heirs, executors, administrators, and assigns,
713 hereby consents to an injunction against the sale of the farm, formerly of said James, described in one of said mortgages in said bill mentioned, and lying and being in the town of Scituate aforesaid. And hereby in consideration of the lien of the said Narragansett Brick Co. upon said farm, alleged in said bill and petition, the said Chapin, trustee, as aforesaid, for himself and for his cestuis que trust, and for his and their heirs, executors, administrators, and assigns, stipulate and agree that he will waive his and their rights, titles, and interests in and to said farm under and by virtue of said mortgage, as prior incumbrances to said Narragansett Brick Company, and hereby agree to give priority as an incumbrance upon said estate to the said attachment and debt of the said Narragansett Brick Company, over and above their said mortgage, and hereby further stipulates and agrees to and with the said Narragansett Brick Company, their successors and assigns, that he, the said Chapin, his cestuis que trust, and his and their heirs, executors, administrators, and assigns, will not at any time, nor under any circumstances, make any claim upon or to said farm, under and by virtue of said mortgage, to the prejudice of any lien or claim of the said Narragansett Brick Company, their successors or assigns, upon said farm, but will and do hereby release any and all claim which they now have upon said farm which does or can in any way interfere with or impair the value of any lien, attachment, claim, or demand which the said Narragansett Brick Company, their successors and assigns, have upon said farm, by virtue of anything alleged in said bill and petition or in any other way. And this stipulation and agreement the said Chapin hereby enters in this case, and consents that it may be made part of the record thereof.

In witness whereof I have hereunto set my hand and affixed my seal this 25th day of February, A. D. 1853.

GEO. W. CHAPIN, *Trustee.* [L. S.]

Signed, sealed, and delivered in presence of—

A. PAYNE.

Approved as satisfactory February 25, 1853.

R. W. GREENE, *C. J. S. Court.*

714 (Copy.)

Know all men by these presents that I, Charles T. James, of the city and county of Providence, in the State of Rhode Island, for and in consideration of the sum of five thousand dollars, to me paid by George W. Chapin, of said city of Providence, as trustee of Hill, Carpenter, & Co. and of the Globe Printing Co., of said Providence, of Hoyt & Tillinghast, of the city of New York, of Hacker, Lea & Co., of the city of Philadelphia, and of Dodge, Tucker & Co., of Boston, the receipt of which said sum is hereby acknowledged, have given, granted, bargained, sold, and conveyed, and do by these presents give, grant, bargain, sell, and convey unto him, the said George W. Chapin, as trustee as aforesaid, his heirs and assigns forever, all and singular those certain lots, tracts, and parcels of land, with all the buildings and improvements thereon, situate in the town of Scituate, in said county of Providence, described, referred to, and conveyed in and by two certain deeds to me, the said Charles T. James; the one from Albert W. Harris, bearing date March

19th, A. D. 1850, on record in the town clerk's office, in said Scituate, in book No. 20 of the record of deeds, page 511, and the other from Syrell Cornell, bearing date June 16th, A. D. 1851, also on record in said office in book No. 21 of the record of deeds, page 75. Reference to said records may be had for a particular description of said land, and also all stocks on said tracts of land: To have and to hold the same, with all the rights, privileges, and appurtenances thereof or thereunto appertaining, to him, the said George W. Chapin, as trustee as aforesaid, his heirs and assigns forever; provided, always, and this deed is upon this express condition, that whereas I, the aforenamed Charles T. James, have this day made and executed my certain negotiable, promissory note bearing even date herewith, and made payable to George W. Chapin, as trustee of Hill, Carpenter & Co., of the Globe Printing Co., of Hoyt & Tillinghast, of Hacker, Lea & Co., and of Dodge, Tucker, & Co., or order, in twelve months after date, with interest, for the sum of twenty-five thousand dollars; and whereas they, the aforenamed Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co. have also agreed
715 to make, execute, and deliver to me, the said Charles T. James, their certain negotiable promissory notes, all to be made payable to me, the said Charles T. James, or order, of even date herewith, and payable in six months after date, to the amount of fifty thousand dollars; and have also agreed that on the maturity thereof they will, at my request, renew the same for a further term of six months, the payment of which said notes so made and executed by them, and also the payment of such other notes as may be hereafter made and executed by them, in renewal as aforesaid being assumed by me, the said Charles T. James; said notes to be signed by the said George W. Chapin, as trustee, as aforesaid, with privilege of payment before maturity. Now, therefore, if I, the aforenamed Charles T. James, or my heirs, executors, or administrators, or any other person for me or them, shall well and truly pay or cause to be paid the aforenamed notes, with the interest thereon, according to their tenor, and at or before their maturity, and shall also at all times forever hereafter indemnify and save them, the said Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., their heirs, executors, administrators, and assigns, harmless of and from any payment for or on account of said notes so made and given by them, or which hereafter may be given by them, in renewal as aforesaid, and of and from all loss or damage, interest, costs, and expenses arising from, out of, or by reason of said notes so given, or that may be hereafter given in renewal as aforesaid, then this deed is to be void, but otherwise to be and remain in full force and effect.

Furthermore I, the aforenamed Charles T. James, do hereby constitute and appoint the aforenamed George W. Chapin, his executors, administrators, and assigns, my true and lawful attorney or attorneys irrevocable, with power of substitution and of revocation, for me and in my name, or in his or their name or names at any time, in case default shall be made in the payment of any note or notes hereby secured, and such default shall continue for the term of six months, to sell at public auction the whole or any part or portion of the aforegranted premises, he or they first giving (after the expiration of said term of six months)
716 twenty days' notice of such sale in some one of the public newspapers printed in the said city of Providence, and in my name or in his or their name or names to make, execute, seal, acknowledge, and deliver to the purchaser or purchasers thereof a good and

sufficient deed or deeds of said premises, so as to vest in said purchaser or purchasers as full a title thereto as is hereby conveyed, and on sale thereof (hereby giving and granting unto my said attorney or attorneys, full power and authority to adjourn or continue said sale from time to time) I do authorize my said attorney or attorneys to receive of and from the purchaser or purchasers thereof the amount the same shall be sold for, and after the payment of all the expenses incident to such sale or sales, to apply and appropriate the residue thereof to the payment of the amount due on such note or notes as are hereby secured, and accounting to me, my heirs or assigns, for all sums over and above the amount thereof, I hereby ratifying and confirming such sale or sales as may be made or cause to be made by virtue hereof.

In testimony whereof I have hereunto set my hand and seal this first day of August, in the year of our Lord one thousand eight hundred and fifty-one, (1851.)

CHAS. T. JAMES. [L. S.]

Signed, sealed, and delivered in presence of—

HENRY MARTIN.

PROVIDENCE COUNTY, *sc:*

In Providence, this fifth day of August, A. D. 1851, then personally appeared Charles T. James before me, and acknowledged the preceding instrument by him signed to be his free act and deed.

HENRY MARTIN,
Justice of the Peace.

Received for record August the 6th, 1851, at 7 o'clock, p. m., and recorded by—

J. A. HARRIS, *Town Clerk.*

A true copy of record. Witness:

J. A. HARRIS, *Town Clerk.*

I, CHARLES F. BROWNELL, of the city and county of Providence, on oath, declare that, on this 23d day of February, A. D. 1853, by request of Nathaniel F. Potter, of said city, I went with him to George
717 W. Chapin, of said city, at his, the said Chapin's counting-room, said Potter being desirous of conferring with said Chapin about certain mortgages which said Chapin was said to hold on certain property and estate of Charles T. James, on which, or a part of which, I was informed that said Potter held a lien by attachment as a judgment-creditor. Said Potter, after a brief preliminary conversation, inquired of said Chapin whether he intended to sell the mortgaged premises in manner as he had advertised the same. Said Chapin replied that the other side were trying to get an injunction, but if he could possibly go on with the sale he should do so. Said Potter then asked said Chapin to inform him about what amount was due on said mortgage. Said Chapin replied that he believed the amount to be a little rising fifty-one thousand dollars, or about that sum. He also said that some time ago he gave Mr. Frieze a statement of the amount due, which statement was a correct one of the amount due at that time. Mr. Potter then said that he did not see but what they were almost selling him out of house and home, and that his only way was to advance the funds and take a transfer of the mortgage for his own protection. Said Potter then told said Chapin that he was ready to pay to him whatever sum

was due on said mortgages, and to take a transfer of the same, and then took from his pocket a check, of which the paper marked "A," and hereunto annexed, is an exact copy, and presented the same to said Chapin, demanding of him a transfer of said mortgages, and informing him that he would hand him the specie if he preferred it. Said Chapin took said check, examined it, and said he was satisfied with it, that the specie was not necessary, but that his instructions were to make no transfer; that if Mr. Potter wished, he would accept of the check, and cancel the mortgage. Mr. Potter replied that would do him no good; that his object was to protect himself; that they were about to sell him out of house and home, and he had a right to advance the funds, and take a transfer of the mortgages; that in order to do that he had collected the necessary funds, and had a proper transfer of the mortgages written for said Chapin to sign, and presented the same to him. Mr. Chapin replied he was very glad to see that he was able to get together so large an amount of money, and was sorry he could not accommodate him, but his instructions were to make no transfer of the mort-
718 gages, and to do nothing but sell the premises or cancel the mortgages. He also said, if Mr. Potter would wait until to-morrow, the gentlemen would be here, and he did not know what could be done, and some arrangement might be made. Mr. Potter said, possibly to-morrow might be too late; that the time was so short that whatever he did, he must do it to-day. Mr. Potter then retired.

CHARLES F. BROWNELL.

Subscribed and sworn to before me this twenty-third day of February, A. D. 1853.

HENRY HOWARD,
Justice of the Peace.

EXHIBIT.

PROVIDENCE, *Feb'y* 23, 1853.

Bank of North America:

Pay the Narragansett Brick Co., N. F. Potter, treasurer, or bearer, fifty-two thousand two hundred dollars.
$52,200.

THOS. F. CARPENTER.

Good for fifty-two thousand two hundred dollars.

H. E. HUDSON, *Cashier.*

Whereas Charles T. James, of the city and county of Providence, State of Rhode Island, &c., on the first day of August, A. D. 1851, executed and delivered to George W. Chapin, of said Providence, as trustee of Hill, Carpenter & Co., and the Globe Printing Company, of said Providence, of Hoyt & Tillinghast, of the city of New York, of Hacker, Lea & Co., of the city of Philadelphia, and of Dodge, Tucker & Co., of the city of Boston, their certain mortgage-deeds, one conveying a certain tract of land, with the mansion-house and other buildings and improvements thereon, situate in the westerly part of the city of Providence, and certain other lots of land of said city, as particularly described and set forth in said mortgage-deed, as recorded in book No. 125, pages 284, '5, and '6, of the records of deeds in said city, reference to which is had; and one conveying all the right, title, and interest of said

James to and to the capital stock of the Atlantic De Laine Co., a corporation incorporated by the general assembly of said State of Rhode Island, and in and to all the real and personal estate of said corporation, as particularly described in said mortgage-deed, as recorded in the registry of deeds, in the town of North Providence, book No. , page , reference to which is had; and the other of said deeds conveying certain real estate in the town of Scituate, particularly described in said mortgage-deed, as recorded in book No. , page , of the registry of deeds, in said town of Scituate, reference to which is had; all of which mortgage-deeds were made for securing the payment of a certain promissory note for the sum of twenty-five thousand dollars, bearing date the first day of August, A. D. 1851, and payable to the said George W. Chapin, trustee as aforesaid, in twelve months after date, with interest; and also for the security of certain promissory notes for the sum of fifty thousand dollars, made or to be made by the said Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lee & Co., and Dodge, Tucker & Co., payable to said Charles T. James, and for indemnity of the makers of said notes from any payment for or on account of the same, or any renewal thereof, and from any loss, damage, interest, costs, or expenses thereon; and whereas payments have been made on account of the sum secured by said mortgage, to the amount of twenty-six thousand seven hundred and eighty-six $\frac{79}{100}$ dollars, and whereas the Narragansett Brick Co., a corporation created by the general assembly of the State of Rhode Island, &c., have attached the real estate in the town of Scituate aforesaid, described in one of said mortgage-deeds, in a suit against the said Charles T. James, now pending in the supreme court in the county of Providence, which suit has been once tried and resulted in a verdict for the plaintiffs; and the said Narragansett Brick Co. have demanded a transfer of said mortgage-deeds to them, and have tendered the amount due upon the notes secured by said mortgages:

Now, therefore, I, the said George W. Chapin, trustee as aforesaid, in consideration of the sum of fifty-two thousand dollars, being the amount due upon the notes and claims secured by said mortgage-deeds, received to my full satisfaction of the aforesaid Narragansett Brick Company, do hereby transfer, assign, and convey unto the said Narragansett Brick Company, their successors and assigns, all my right, title, and interest as trustee as aforesaid, in and to said mortgage-deeds, and the estates and property therein described, and the debts and evidences thereof, thereby secured. To have and to hold the same to them, the said Narragansett Brick Company, their successors and assigns, forever; and I hereby substitute the Narragansett Brick Company, their successors and assigns, to all the rights, powers, and privleges which I have as such trustee, and as granted by said mortgages, in, under, and by virtue of the same, and the power and authority therein granted and contained.

In testimony whereof I have hereunto set my hand and seal this twenty-third day of February, A. D. 1853.

[L. S.]

Signed, sealed, and delivered in presence of—

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
Providence, sc:

CLERK'S OFFICE, SUPREME COURT,
Providence, Oct. 3, A. D. 1872.

I, Charles Blake, clerk of the supreme court of said State, within and

for the county of Providence, do hereby certify that the foregoing are true copies of the original record of said court, of the cause in equity, Narragansett Brick Company vs. George W. Chapin et als., to which are subjoined and annexed true copies of the original stipulation of the defendant; of a copy of a mortgage, Chas. T. James to George W. Chapin, trustee; of an affidavit of Charles F. Brownell; and of an assignment of mortgages, George W. Chapin, trustee, to the Narragansett Brick Company, (sealed but unsigned,) on file in said clerk's office, in and among the papers of said cause; the original bill wherein was filed February 23, 1853, and sub ad res issued returnable 3d Monday in March, 1853; and the original final decree wherein was on the 5th day of said March term, 1853, filed by consent; all which appears by the books of record and files of said court in said clerk's office now remaining.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, this third day of October, A. D. 1872.

CHARLES BLAKE, *Clerk.*

721 EXHIBIT O.—F. A. D., *Examiner.*

DEAR SIR: Chapin has backed out of his agreement, made yesterday, to postpone the advertisement of property till Tuesday, and has determined, in consequence orders received from Hacker, Lea & Co., to advertise to-morrow.

I write you to New York in full to-night, and if anything occur to prevent your being there to-morrow, I will write you again at Washington.

Yours, truly,

L. B. FRIEZE.

N. F. Potter has just informed me that you were expected in New York to-morrow.

L. B. F.

PROVIDENCE, *Feb.* 4, 1853.

EXHIBIT P.—F. A. D., *Examiner.*

Letter dated Providence, February 4, 1853, from L. B. Frieze to Charles T. James. See Exhibit C, annexed to original deposition of Lyman B. Frieze, March 27, 1865, by Joseph S. Pitman, examiner.

EXHIBIT Q.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 9, 1853.

DEAR SIR: I received your dispatch of the 7th instant, but as yet have not received the letter mentioned therein, and therefore suppose that it was not mailed, or else must have been miscarried. I have telegraphed you at the Irving and Astor, but learning that you had gone to Washington, forwarded dispatch to that place.

722 I am not so certain about our ability to prevent a sale of the property under the mortgage, as an injunction upon the mill would not affect the claim of the parties holding the mortgage outside of the company, as is the case with this—it being held by the members individually under a trustee instead of the company. If we can manage the mortgage, we can then very easily hang up the business of the company. We have only a few days to work in before the day of sale arrives, so whatever is done must be done at once. People begin to

think that everything is going by the board—the property to be sold; and I suppose are speculating as to who will purchase it.

Please write me by return of mail, (if you have not already done so,) so that I may know what I am to depend upon.

Yours, truly,

L. B. FRIEZE.

EXHIBIT R.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 11, 1853.

DEAR SIR: Your favor of the 7th inst., from New York, postmarked 8th, was not received by me till about 10 o'clock yesterday forenoon, while that of the 8th from Washington was received last evening. Our post-office folks want a little overhauling and stirring up.

The De Laine Company have credited us on account of stock one hundred and thirteen thousand dollars, leaving a balance due on account of subscription thirty-seven thousand dollars. As the advance was made to me as assignee, with the agreement that they should receive their pay out of proceeds of sale under the assignment, I do not see (or Potter either) that the payment of this amount and obtaining the certificates could in any way affect the disputed account, which would be still open for adjustment under the reference.

I find by the charter that one hundred shares of the stock and
723 the treasurer or president form a quorum, and therefore I suppose would enable them to hold a meeting. Potter looks into the matter this afternoon, and I will give you his opinion at the close of this letter on that point.

As we have not much time for action, whatever we intend to do must be done quickly, or the thing might slip through.

Some fifteen or twenty of the teeth of the main driving-gears broke yesterday and stopped the whole mill, and it will probably take some four or five days to repair. Fiske is in Pennsylvania. Chapin fears that the mill is liable to this accident the whole time, and it cannot be permanently remedied without an outlay of some fifteen thousand dollars; for this reason he would not give so much for the stock as he would have done some days since.

Cozzens stopped me this morning, and said he thought if you would give the subject your attention, that some satisfactory arrangement might be made with the parties in New York.

I send you with this "De Laine charter" and "by-laws."

Potter is arguing a case in court, and I cannot get his opinion to-day in time for this mail.

Yours, very truly,

L. B. FRIEZE.

Say to father that we are all well.

EXHIBIT S.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 12, 1853.

DEAR SIR: Potter did not get through with his case till very late last evening, and was then obliged to prepare himself and have the parties present for a case that comes off out of town to-day. He will see me this evening or to-morrow, (Sunday,) when we shall go through with the whole matter.

Dike tells me confidentially that if the property is sold, the De Laine

Company will try to keep hold of the balance over and above the mortgage to pay their advances. They will also endeavor to sell a
724 few shares first, and purchase at almost any price themselves, and so control the mill. It is not safe to bring the property to a sale. The advantage is all on their side; you must throw away money by overbids on every lot of stock that is put up, or they will buy and so obtain a majority of the votes. For your friends to purchase the stock in this way, by competition on shares in small lots, it would cost a very high figure. I am satisfied that the only true way to put this thing through is to pay the mortgage and have it transferred.

I wrote you last evening and forwarded copy of De Laine charter and by-laws. Will write you again on Monday. In haste.

Yours, very truly,

L. B. FRIEZE.

Fiske returned last evening.

EXHIBIT T.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 16, 1853.

DEAR SIR: I have had some conversation with Chapin this morning, and learn from him that the mortgagees will, without doubt, refuse to transfer the mortgage held by the De Laine Company. His father is unwilling to do so, and he thinks the other parties interested in the matter possess the same feelings. He says you have always talked to them of lifting the mortgage, and they so understood it. I think if the money had been furnished by the parties, as agreed some time since, there would have been no trouble about it. Time has made them think of and fully see their own position, and they will now endeavor to profit by it. I think the chances of any injunction on my part looks very doubtful, as I am unable to bring forward much proof, and the De Laine Company can show that we have made repeated promises to lift the mortgage, &c., &c., and never fulfilled them, &c., &c. I am collecting all the facts I can, but whether they will be sufficient to produce the desired effect remains to be seen.

725 The next hope to any action of myself is on the part of N. F. Potter, who, holding an attachment on a portion of the mortgaged property, might obtain a stay of proceedings for sixty days by giving bonds for the payment of the mortgage within that time.

Of one thing you can rest assured of—the De Laine Company are determined to push everything to a sale, and hold everything they can obtain over and above the mortgage towards their advances to me as assignee.

If I had not expected this matter to have been closed some time since I should have have taken hold of it myself and made some arrangement with the De Laine Company or other parties that would have made the stock or property realize something near its value. As it is now, it might not bring more than one-half.

You can see as well as myself that there is no time to be lost if anything is to be done by you.

Very truly, yours,

L. B. FRIEZE.

EXHIBIT U.—F. A. D., *Examiner.*

Letter dated Providence, February 18, 1853, from Lyman B. Frieze to Charles T. James. See Exhibit D, annexed to original deposition of L. B. Frieze, March 27, 1865, by Joseph S. Pitman, examiner.

EXHIBIT V.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 21, 1853.

DEAR SIR: Your favors by Gardner received yesterday. I was with General Carpenter yesterday, and also with Potter, and with them again this morning, and have placed everything in proper train.
726 We think it advisable (unless your letter which I expect this evening gives us information which we do not now possess) to keep on with our injunction matters in order to enable us to head them off if the De Laine Company should take any new course, or that we should be at all delayed in other matters. Besides, by keeping up a sham fire in that direction, we completely blind them as to our real motives and projects. I shall not move the Blackstone mortgage till we arrange for the other; otherwise it might give the present mortgagees just that amount the advantage of us by removing previous incumbrances. The moment that we get the other mortgage ready to turn in the shape that we wish, that moment the Blackstone is off. I shall work cautiously, and say no more than is actually necessary to carry the thing through, to any one. I delay all action till I get your letter this evening.

The injunction will not interrupt any other arrangement, as we can very easily withdraw our action if we find it necessary to do so. We think strongly of moving through N. F. Potter instead of giving a new mortgage, he having, as we suppose, the right to demand a transfer of the mortgage on account of securing his attachment from being sold out. It will not answer to let Potter take off his attachment till we have got everything arranged.

I will write you again to-morrow, and daily after, till we get the thing in shape.

In haste, yours, truly,

L. B. FRIEZE.

EXHIBIT W.—F. A. D., *Examiner.*

Letter dated Providence, Feb. 23, 1853, from L. B. Frieze to Charles T. James. See Exhibit E, annexed to original deposition of L. B. Frieze, March, 27, 1865, by Joseph S. Pitman, examiner.

727 EXHIBIT X.—F. A. D., *Examiner.*

DEAR SIR: The petition for injunction came off to-day. The court stopped the sale of the De Laine Mill stock, but not of the other property. N. F. Potter's, on Scituate Farm, comes off to-morrow. We hope to be able to bring the company to terms, and get them to assign the mortgage before matters come to a sale.

I find a telegraph on my return from Kingston, saying that nothing is done at Hartford. Palmer was here last night, and when he left said the matter should be fixed to-day.

The New York ($15,000) wrote that their attorney would be here this evening. The Blackstone mortgage is $17,061.

No more time.

Yours, truly,

L. B. FRIEZE.

FEB. 24, 1353.

EXHIBIT Y.—F. A. D., *Examiner.*

PROVIDENCE, *Feb.* 26, 1853.

DEAR SIR: Your dispatches received this morning referring to sale of house, &c. We had made up our minds to run the risk of bidding in,

provided it did not go very high, and took every means in my power to frighten off buyers at the sale. Chapin represented the Blackstone mortgage as being but $12,000, and the collateral held for the balance. I informed the crowd that the mortgage was $17,000, and I should resist any claim upon the collaterals to utmost extent of the law. I also put the liens up to the highest point, and told them Mrs. James, under the circumstances of the sale, would never sign off, but would claim her right of dower (i. e., a room in the house) during her life-time. They asked me if Chapin had a right to sell all the lots. I answered that he had a right to sell everything in which they could give a good title, and that they must find out what that was. N. F. Potter handed a protest to Dike, which he read, against any such sale, as an attaching
728 creditor whose suit was still pending, and he should test the title given by Chapin as trustee, &c. We played "bluff" during the whole sale, and finally frightened people off so that they dared not bid, and the estate was struck off to George B. Holmes, the only man (excepting Potter) that dare to stand by me and face the music, for $9,850. E. J. Seagrave wanted the place very much, indeed, and would have probably given near twenty thousand dollars if we had not frightened him off on quarrelsome title. He said he was willing to pay what the place was worth, providing he could have a good title, &c., but Chapin did not dare to give him a guarantee after my threats to fight the matter out. G. W. Hallet also wanted the place, and several others bid on it, but did not finally dare to purchase.

The court has referred the liens back to the master, and allowed nearly the whole amount of Sweet & Carpenter's and Shaw's claims. If you send us enough to pay the liens, and I obtain the $15,000 from New York, the matter for the balance on the estate can be fixed with General Carpenter, but if not received from New York by to-morrow morning it will be necessary for you to send enough money for the liens, so that it will arrive on Tuesday, and enough to pay half of the purchase-money, and I can have enough from General Carpenter to pay the Blackstone and the other half of the purchase, and give him a mortgage for $20,000.

Say, $3,500 liens.
5,000 purchase.

8,500 from you.
Blackstone, 17,000
Purchase, 5,000 from Carpenter.

$30,500 whole amount of sale.

The deed is to be made out in my favor, and I am to make a will in your favor, and place it in the hands of General Carpenter till matters are straightened.

The court yesterday allowed Potter's attachment to be prior to trustee mortgage, so that is all right. The next fight is for the De Laine
729 stock, &c., which is now hung up till a statement can be made, and it must be very satisfactory to suit me, otherwise I shall apply for injunction as a stockholder, &c. I have had a brush with nearly all the company, and talked my opinion without any reservation whatever, and given them to understand that we ask no favors, but are determined to fight the battle to the end. Old Josiah (Oily Gammon) tried very hard indeed to smooth matters over after the sale this morning, and screen George and himself for any part in it, and said he hoped that I understood their feelings. I replied that I did, perfectly. As to Jos. Lea, look for him; your confidence is misplaced. He really at the

head of the van. The Hartford don't mean to do anything. They have twice pledged me their word and broken it. I would not now take it for the value of a straw. I should do nothing for them till they had fully redeemed their promises.

Beals has notified me that Messrs. Coffin & Haydock will sell the Cannelton bonds on the 2d instant. You had better send your protest to counsel against the sale, and telegraph me who he is, and I will do the same and take measures to stop it.

The $52,000 check is still in the possession of General Carpenter; consequently I could take the $4,000 we placed in his hands towards these payments, and make the amount from you so much the less, adding the balance of $2,000 on Blackstone mortgage.

I send you a letter received from Palmer, which speaks for itself, and shows conclusively that they are playing with us.

If anything new comes to light, will keep you posted by telegraph and letter.

Very truly, yours,

L. B. FRIEZE.

Say to father that all are well.

EXHIBIT Z.—F. A. D., *Examiner.*

Letter dated Providence, March 3, 1853, from Lyman B. Freeze to Charles T. James. See Exhibit F, annexed to original deposition of L. B. Frieze, March 27, 1865, by Joseph S. Pitman, examiner.

730 EXHIBIT AA.—F. A. D., *Examiner.*

Record of meeting of directors of September 4, 1868.

A meeting of the directors of the Atlantic De Laine Company was held at their office September 4th, 1868, at one o'clock p. m., pursuant to the following notice:

"PROVIDENCE, *September* 1, 1868.

"There will be a meeting of the directors of the Atlantic De Laine Company at my office on Friday, the 4th inst., at 1 p. m., for the transaction of any business that may legally come before them."

Present: Josiah Chapin, Edward Hoyt, William Brenton Greene, George W. Chapin.

Upon motion of Mr. Hoyt, which was seconded by Mr. Greene, it was

Voted and resolved, That whereas, heretofore, from time to time, with the knowledge and assent of the directors, the earnings of the company and its funds otherwise acquired have been invested in lands, buildings, and machinery, and the like additions to the property of the company; and whereas, though made with their knowledge and assent, the said investments have not been formally authorized by the board of directors at meetings regularly called and holden for that purpose; now, therefore, it is

Voted and resolved, That each and all of such investments be, and the same are hereby, approved, ratified, and confirmed.

It was also

Voted and resolved, That whereas certain shares of the capital stock of the corporation purchased of A. Tucker, jr., and W. C. Chapin, in December, 1862, were divided and distributed among the stockholders

in June, 1864, as appears from the books of said corporation; now, therefore, it is

Voted and resolved, That such division and distribution be, and the same is hereby, approved, ratified, and confirmed.

Adjourned.

(Signed) GEO. W. CHAPIN, *Clerk.*

731 *Copy of affidavit of Robert E. Northam.*

I, Robert E. Northam, on oath declare and say that on the first day of September, A. D. 1868, I notified Josiah Chapin, Edwin Hoyt, William Brenton Greene, A. Tucker, W. C. Chapin, and George W. Chapin of the meeting of the directors of the Atlantic De Laine Company, on the 4th of September, 1868, as follows:

I deposited in the post-office, at Providence, R. I., a notice, of which the following is a copy:

"PROVIDENCE, *September* 1, 1868.

"There will be a meeting of the directors of the Atlantic De Laine Company at my office, on Friday, 4th inst., at 1 p. m., for the transaction of any business which may legally come before them.

(Signed) "GEO. W. CHAPIN, *Treasurer.*"

Addressed to: Edwin Hoyt, New York; William Brenton Greene, New York; A. Tucker, Boston, Mass.; W. C. Chapin, Lawrence, Mass. And I handed a similar notice to Josiah Chapin, and Geo. W. Chapin, in the office of the company, in Providence, on the same day.

(Signed) ROBERT E. NORTHAM.

Subscribed and sworn to February 1, 1870.

Before me.

(Signed) ABRAHAM PAYNE,
Justice of the Peace.

It is agreed that the meeting of the directors held next prior to September 4th, 1868, was held on May 6th, 1853, and the meeting held next prior to that of May 6th, 1853, was held May 22d, 1851.

A. PAYNE, *for Respondents.*

732 And at the June term, 1872, to wit, October 23d, 1872, said cause came on to be heard before Justice Clifford and Judge Knowles, upon the motion for a revision & revisal of said interlocutory decree, and upon the exceptions to the master's supplemental report, and was heard and held for advisement.

And at the June term, 1873, to wit, June 19, Justice Clifford delivered the following opinion on said cause:

733 Circuit court of the United States, district of Rhode Island, June term, 1873, Clifford and Knowles, J. J.

LUCINDA JAMES, ADMX.,
v.
THE ATLANTIC DE LAINE CO. AND ALS. } In equity.

Opinion.

CLIFFORD, *J.*

Exceptions to masters' report recommitted.—Supplemental report, and exceptions to the supplemental report.

Sufficient appears in the prior opinion of the court in the case, which was delivered at the time the decretal order was entered referring the

same to a master, to show the nature of the claim made by the complainant, and the several defences set up to the same by the respondents, without any further reference to the bill of complaint or to the answer. By that order the court set aside the instrument of release and settlement executed by the assignee of the original complainant to the treasurer ot the corporation respondents, and adjudged and decreed that the same were void, as having been obtained by the assignee by fraudulent representations and concealment.

Such an adjudication entitled the complainant to relief, and the court accordingly sent the cause to a master, to take an account of all the dealings between the original complainant and his assignee and
734 the respondent company, or their treasurer, including an account of all assigned and mortgaged property held by the original complainant, and by him assigned and mortgaged to those parties, or which passed or came into the hands, possession, or control of the respondent company or their treasurer under the operation of the said instruments of settlement and release, or in any other manner subject to the payment of the debts, if any, due to the creditors of the original complainant, as secured by the instrument of assignment.

Pursuant to that decretal order, the master gave notice and heard the parties, and on the 10th of December, 1870, made his report to the the court, annexed to which are the exceptions of the parties to the finding of the master; and the court, having heard the case upon the exceptions to the master's report, passed an order that the report be recommitted to the master, with instructions that he append to it a supplemental report comprising two summary statements, showing, first, the result to which he comes under the theory of accounting the first adopted, on motion of the complainant; secondly, showing the result to which he comes under the second theory, which he adopted at the suggestion of the respondents, reserving the exceptions filed by each party, and giving to each party the right to except to the supplemental report.

Enough was done under that order to constitute, as the master supposes, a compliance with these instructions, and he accordingly, on the 20th of June, 1872, made the supplemental report which appears in the record. Prior to the hearing upon the exceptions to the master's report, the respondents filed a petition for a rehearing of the case upon the merits, but they withdrew the same at the suggestion of the court that the application was premature when the hearing is asked upon the exceptions, it being understood that the withdrawal was without prejudice to the right to renew it at the proper time. On the 19th of August, 1872, the master filed his supplemental report, to which are annexed the exceptions of the respective parties, and on the 3d of September following the respondents filed their petition for leave to review the original decretal order. Sufficient appeared in the original record to satisfy the court that the exhibit made by the treasurer of the company to the assignee as the basis of the settlement between the parties,
735 was erroneous and false, and the court accordingly found that the settlement and release executed by the assignee of the original complainant were obtained by fraudulent representations and concealment.

Certain statements appear in the original report of the master which tend to show that the court erred in that finding of fact. Such, also, were the views of the respondents, and it appears that they, in pursuance thereof, on the 3d of September, in the same year, renewed their application for a review of the original case, insisting that the decretal

order was for the wrong party; and it also appears that the court, in view of the statements contained in the report of the master, tending to show that the court erred in the said finding, passed an order granting a rehearing "as to that fact," and gave leave to each party to take further proof on the question whether the statement of the accounts furnished by the treasurer of the corporation to the assignee was or was not false, as found by the court.

Proofs were taken by both parties under that order, and the cause, on the 23d of October following, came to hearing upon the proofs exhibited and the exceptions of the respective parties to the supplemental report of the master. Questions of considerable difficulty are presented in the case, which are of great importance to the parties, some of which arise out of the application for a review, and others arise upon the exceptions filed by the respective parties, both to the original and supplemental reports of the master, all of which are still open for consideration, as it was not intended that any of them, except the one withdrawn by the complainant, should be superseded by any subsequent order in the cause. Before attempting to examine the several exceptions to the master's report, it becomes necessary to decide whether the view of the court, as embodied in the decretal order, is correct, as that presents a preliminary question which, if decided in favor of the respondents, will terminate the controversy. Coming to the application for review, the question is, whether the statement of the accounts furnished by the treasurer of the corporation to the assignee of the original complainant was or was not false, as found by the court in the opinion delivered at the time the court entered the decretal order. Aid in solving the questions presented will be derived from a proper understanding of the exact relations which the parties sustained to each other in the
736 original transactions, out of which the controversy has arisen, and for that purpose it will be necessary to refer very briefly to the original record, as those relations commenced in an enterprise which originated even before the respondent company was incorporated.

Certain mercantile firms, desirous of engaging in the manufacture of fabrics known as de laines, contracted with the original complainant to construct a factory for the purpose, and to put the same in operation, as he was known to possess great skill and experience in such enterprises, as well as in the choice of sites and making the necessary erections, as well as in the selection of machinery and putting the same in operation.

Five firms entered into an association for the purpose before they were incorporated, and to accomplish the object they agreed to create a stock of three hundred shares of one thousand dollars each, and it appears that the complainant became the subscriber for one-half the amount, and they also contracted with him to build and equip the mill and put it in operation for the sum of two hundred and sixty thousand dollars. He made that contract on the 1st of January, 1851, prior to the passage of the act incorporating the company, which became a law at the next session of the legislature of the State, which convened in May following. Slight alterations were made in the contract by mutual consent subsequent to the act of incorporation, and on the 1st of August of the same year the complainant associated with him his son-in-law as a contractor, and the incorporated company assumed the entire obligations of the contract as the other contracting party. Application was made at the same time by the complainant to the five firms whose members subscribed for the other half of the stock of the company, for a loan of seventy-five thousand dollars, and it appears that they advanced him the amount for which he applied by signing accommodation notes

and by accepting his drafts, and that he gave them satisfactory security for the loan in a mortgage executed to the treasurer of the company, as trustee for the corporation which made the advances, including in the instrument all his interest in the stock and property of the company. He also executed to the same person, as trustee of the lenders of the credit, separate mortgages of his homestead in the city of Provi-
737 dence, and of his farm in the town of Scituate, together with certain bonds and notes of a western corporation. Though he obtained the pecuniary assistance for which he applied, yet it was not sufficient for the purpose, and on the second of September of the same year he failed in business, and made an assignment of all his property of every name and description to the assignee named in the instrument of assignment. His assets consisted of the several properties described in that mortgage, and of the other real and personal property, stock, and promissory notes specified in the schedule annexed to the second deposition of the assignee, as exhibited in the record. By the terms of the instrument he made his liability under the contract with the company for building and equipping the mill a charge upon the assets specified in the assignment, and directed the assignee to apply all the assigned estate, as the same should come to his hands, to the fulfillment of that contract so far as the same was necessary to build and equip the mill and put the same in operation.

Due acceptance of the trust was made by the assignee, but he soon found that means to carry forward the work could not be raised fast enough by converting the assigned property into money; and to obviate that difficulty, he made an arrangement with the company through their treasurer to supply the deficiency, and to charge the same to the assets in his hands. Advances were made by the treasurer under that arrangement, as claimed by the respondents, to the amount of fifty-three thousand three hundred and fourteen dollars, and it appears that the assignee completed and equipped the mill early in February subsequent to his appointment, and that the mill with the machinery was delivered to the company in the course of that month. Success ultimately attended the enterprise; but the contractor, through whose skill and experience it was originated and put in operation, continued to be embarrassed, always claiming, however, that he would be able in time to meet his liabilities, and that the property mortgaged to the company would revert to him under circumstances which would enable him to save a large portion of his estate. Negotiations to that end were instituted early in that season, and were continued throughout the year, but they resulted in nothing of value to either party. Power to sell for breaches of condition was conferred upon the mortgagee or trustee in each of the mortgage-deeds, and it appears that the
738 person for whose benefit the respective mortgages were given directed the trustee to advertise the several properties for sale under that power, it being understood by the moving party that the mortgaged properties, other than the stock of the complainant in the company, should all be first sold and applied to discharge the mortgage-debts. All of the advertisements bear date the fifth of February, but the respective sales were appointed for different days, the last of which, to wit, the sale of the homestead and of the stock held by the complainant in the company, for the twenty-sixth of that month, which was near the close of a short session of Congress, and at a time when the assignor of the several properties was a Senator in Congress, and under the obligation of official duty to attend the daily sessions of the Senate. Differences of opinion existed between the parties as to

th amount due from the mortgagor to the company, but it was known t the assignee that the sale of the Warwick farm and other collateral ecurities had reduced the original mortgage-debt to fifty-two thousand dollars, and that he could have the contemplated sales postponed if he could raise that sum, as the disputed amounts were under arbitration, and if the corporation had any claim against him as assignee, they could enforce it by their charter-lien or in due course of legal proceedings. Efforts of various kinds were made to raise the necessary amount, but the assignee finding it impossible to do so, in the absence of his assignor, on the fifteenth of February, addressed a written communication to the treasurer of the company, and demanded "a statement of the condition, standing, and accounts of the company," so that he might be able to represent the stock advertised to be sold in its true light, "and make it sell for what it was worth."

Instead of complying with that demand, the trustee called upon the assignee to convince him that such an account could not be made at that time, and he still professes to believe that the assignee was satisfied with his explanations; but it is quite evident that he is under a mistake, as it appears that, failing to obtain the required statement, he instituted a suit in equity in the State court against the trustee to enjoin the proposed sales of the several properties, and that the court, no satisfactory accounts having been rendered, enjoined the sale of the stock until the further order of the court. Proceedings to accomplish the same object were also instituted by certain credit-
739 ors of the mortgagor having a lien upon the Scituate farm, in the course of which the creditors tendered to the company the amount of the mortgage-debt, which the company refused to accept, and the court passed an order enjoining the sale unless the trustee would file a stipulation not to enforce the mortgage against the property subject to the lien of the complainant in that suit. Earnest efforts were made by the assignee, if the statements in his letter to the mortgagor are to be credited, to prevent the sale of the homestead, but without success, as it appears that the sale was made at the time specified in the advertisement prepared and published by the trustee. Two days before the sale of the homestead, the assignee informed the mortgagor that he had succeeded in stopping the sale of the stocks, but that the application for an injunction as to the sale of the other properties had been denied; and it appears that it was on the very day that the sale of the homestead took place that he gave to his assignee a full description of the nature of the efforts he had made to prevent the consummation of that design. Such a statement as that demanded was not furnished during the controversy growing out of the application to enjoin the proposed sales, and it is clear that the letter of the assignee addressed to the assignor on the day of the sale furnished no evidence that negotiations were pending for a settlement, or for a transfer of the equities of redemption. Two suits were pending to redeem the properties mortgaged, and the order of the State court restraining the sale of the stock was in full force when the sale of the homestead took place. Both of these parties were, in some respects, the representatives of the original owner of the property, and, as such, were bound to good faith in their dealings with the same; but it is clear that they were pursuing opposite aims, as the trustee was endeavoring to effect a sale of the mortgaged properties, and the assignee was exerting all his power to prevent the accomplishment of that object. Nothing occurred to change these relations prior to the sale of the homestead, but it appears that the trustee, on the same day, addressed a letter to the assignee, enclosing a paper, which he described "as a statement of

the affairs of our company," without making any reference to the fact that the assignee had, ten or twelve days before, demanded of him a statement of the condition, standing, and accounts of the company, which he had neglected and refused to furnish. Request of the
740 kind had previously been made and refused, and the charge is that the statement as furnished is incorrect and untrue, and that it was so made and rendered with intent to deceive and defraud the assignee, and that the assignee was thereby deceived as to the true state of the accounts, and that he was thereby induced to entertain a proposition which resulted in a withdrawal of the injunction-suit and in the execution of mutual releases between him, as such assignee, and the respondent corporation in respect to the entire interest of the complainant in all the assigned and mortgaged property.

Facts and circumstances were introduced at the original hearing sufficient to satisfy the court that the charge made in the bill of complaint was true, and the court accordingly entered the decretal order which is the subject of complaint in the application for a rehearing.

Having carefully weighed the facts and circumstances introduced in evidence, the court came to the conclusion that the release given by the assignee to the company was void, and adjudged and decreed that the same be set aside as having been obtained by fraudulent representations and concealment. Certain suggestions were made at the recent argument, to the effect that the exhibit in question was not properly before the court at the final hearing when the decretal order under revision was entered; but it cannot be necessary to consume time in discussing that proposition, as the record is full of evidence to refute it, and to show that both parties, as well as the court, treated it as a most material part of the proofs of the case. Undoubtedly it first came into the case as an exhibit to the deposition of the treasurer of the company, and it is equally true that certain portions of his deposition were excluded as unauthorized at that time by the acts of Congress; but the record shows that the time for taking proofs was subsequently enlarged, which enabled the respondents to retake that deposition and some others which had been excluded under the same ruling, Congress having in the mean time made parties competent witnesses in equity suits as well as in actions at law. Nor is there any doubt entertained that the decision was correct upon the evidence then before the court in entering the decretal order. Much discussion on that topic is unnecessary, as the proposition is scarcely denied.

Suppose that it is so; still, it is insisted that the new evidence
741 taken under the recent leave granted for that purpose is sufficient to show that the finding of the court was erroneous, but the court is not able to concur in that view. Instead of that, the new evidence convinces the court that the original decision was correct, and that the release executed by the assignee was properly set aside as having been obtained by fraudulent representations and concealment. Considerable embarrassment, it must be confessed, was experienced in conducting the original investigation, as the books of the company were not before the court, but the facts and circumstances adduced in evidence were amply sufficient to convince the court that the account exhibited was not an official account made by the company or by its managers, and that it was not an account copied from any official statement of the affairs of the company in respect to its dealings with the original complainant. All doubt upon the subject is now removed, as the party who furnished it to the assignee as the basis of the settlement confesses under oath that it was transcribed from a private memorandum kept by

him, and that it nowhere appears on the books of the company as an exhibit of their affairs, which of itself, in view of the circumstances attending the settlement and transfer, is sufficient to justify the finding of the court, as it falsely purports to be "a true copy from the books." Reference to the charter will show that the annual meetings of the company were required to be held on the first Wednesday of February in each year, and the by-laws require that the directors, at each annual meeting, should give a summary account of their management to the company for the preceding year, and at all other times when required by the stockholders representing one-third of the capital stock. Apart from that, it was also made the duty of the treasurer to render to the directors semi-annually an account of the affairs of the company, and at all other times when required, and at each annual meeting to exhibit his account to the corporation. Furnished as the statement was as a true copy from the books, it must be assumed that the assignee received it as an official account, made under the obligation of law and of the contract between the parties to which it related, and that he gave it full credence as an official exhibit made by the proper officers of the company in the performance of their appropriate duties.

742 Nothing of the kind, however, appears on any of the books, and the party who furnished it testifies under oath that "it came from my private letter-book." Items of large amount were included in the statement which do not appear in the books at all, and some of those which do appear are erroneous in large amounts, as more fully appears by the proofs exhibited in the record, fully justifying the remark of the court in the former opinion, that the statement was inaccarate in large amounts, and greatly to the prejudice of the original complainant. Viewed in every aspect, it is the conclusion of the court not only that it was false, but that it was furnished with the intent to deceive and defraud by promoting a settlement prejudicial to the original complainant, and more favorable to the respondent corporation than truth and justice would admit.

In such a case the settled rule is, that the assignor is entitled to take the residue of the estate after his debts outstanding at the date of the assignment are paid. (Halsey v. Whitney, 4 Mason, 222; Brashier v. West, 7 Pet., 608.)

By the extinguishment of the debts the assignee became the trustee of the assignor, and the latter became clothed with all the rights and powers of a cestui que trust, to the same extent as the creditors previously had, whose claims he had extinguished. (Lazarus v. Ins Co., 5 Pick., 81.) Consequently, the original complainant was the proper party to come into a court of equity and pursue the trust-estate, it appearing that it had been fraudulently or improperly parted with by the trustee. (Story, Eq. Plea., sec. 221; Oliver v. Pratt, 3 How., 400; Lewin on Trusts, 730; Hovendell v. Annesley, 2 Sch. & Lef., 633.)

Tested by these considerations, the court is of the opinion that the finding of the court as exhibited by the decretal order is correct, and that the original complainant was and is entitled to the relief therein adjudged and decreed. Renewed reference to the defences set up in the answer will not be necessary, as those matters were fully considered in the former opinion, to which reference is made as expressive of the present conclusions of the court. Entitled as the complainant clearly is to relief, the only remaining question of much importance is, what is the proper measure of that relief? which is a question of great difficulty and embarrassment.

743 Twice the court has referred the case to a master with a view

to solve the difficulty and to discover the true theory of doing justice between the parties, without complete success, as the exceptions which accompany the respective reports make it necessary for the court to adjudicate the whole controversy to the same extent as if no reference had been made.

Separate examination of the several exceptions, under the circumstances, will not be attempted, as it would extend the opinion to an unreasonable length without accomplishing anything of value to either party. Such an investigation would not serve any useful purpose, as neither the reports of the master nor the exceptions, nor both combined, are of a character to enable the court to come to a satisfactory result without a further reference. Much has been accomplished by the master which will be of great value in the further investigation of the subject, and the criticism of the parties as exhibited in their exceptions will also be of service in framing a new report; but the court is not able to deduce from the record in its present condition, without performing work which belongs to a master, such a result as the court is prepared to adopt as the final decree in the case.

Governed by these considerations the court will send the whole case to the master with more specific instructions for a new report, and for a statement of the accounts between the parties in respect to the mortgage-debt. Under the decretal order the complainant is entitled to redeem the mortgaged property, just as her intestate might have done if the settlement and release mentioned in the decretal order had never been executed. Set aside as the release and settlement have been, as having been obtained by fraudulent representations and concealment, it is clear that the complainant is entitled to have an account against the respondents as against mortgagees wrongfully in possession, including the net and annual profits of the property, without being accountable for the losses of subsequent years. All sums due to the mortgagee will first be charged to the mortgaged estate, as ascertained from the agreements and actual dealings of the parties, whether advanced to the actual mortgagor or his assignee. Having ascertained the unpaid balance of the mortgage debt, including interest to the present time, the master will next proceed to take an account of the net earnings of the
744 mortgaged property, as against a mortgagee wrongfully in possession, deducting insurance, taxes, repairs, including ordinary improvements such as relate to the operative machinery and the motive-power of the mill, and including all the net earnings subject to those deductions, whether actually declared as dividends or not, and however the same may have been expended or appropriated. Earnings of one year are not to be set off by the losses of a subsequent year, as the respondents are to be treated as mortgagees wrongfully in possession, but in ascertaining the earnings of a particular year, the losses of that year are to be deducted from the gross earnings, in order to ascertain the net earnings of the year, as well as the cost of insurance, taxes, repairs, ordinary improvements, running expenses, and commissions. Shares of the stock paid, the complainant is entitled to recover in specie, but the complainant is not entitled to recover the thirty-seven shares never paid, as it cannot be said that those shares are wrongfully in the possession of the respondents. Nothing having been paid for the same, the court is of the opinion that no recovery can be had on account of those shares.

Estimates of earnings will be made on the basis of the shares paid, without including those not paid, and the master, on stating the accounts, will be governed by the principles herein laid down, and will

deduct the amount of the unpaid mortgage-debt from the amount of the earnings of the mortgaged property, adjusting interest to the present time, and state the exact amount which the complainant is entitled to recover. Interest upon the total amount of profits earned prior to the date of the decretal order, will be computed from the date of that order to the completion of the report of the master. Profits earned subsequently to the date of the decretal order will only bear interest from the close of the last year included in that computation. Power is vested in the master to call for new accounts and to hear the parties further if necessary, to enable him to state the account as required, and he will submit his draft report to them, as required by the rules.

Jas. H. Parsons, Thos. A. Jenckes, Caleb Cushing, for complainant; A. Payne, R. W. Greene, Benj. R. Curtis, for respondents.

745 Whereupon the following order was entered:

Ordered, that the cause be recommitted to the master with instructions to state the accounts between the parties in accordance with the rules and directions contained in the opinion of the court just delivered in the case, and to report the result to the court as soon as may be.

Whereupon the cause was again recommitted to the master, and upon the 30th September, 1873, the following report was filed.

746 *Master's final report—Filed Sept. 30th*, 1873.

LUCINDA JAMES, ADMINISTRATRIX,
vs.
ATLANTIC DE LAINE COMPANY ET ALS. } In equity.

To the honorable the circuit court of the United States for the district of Rhode Island.

The above entitled cause was recommitted to the master at the June term, A. D. 1873, by the following order:

RHODE ISLAND DISTRICT, *sc:*

Circuit court United States, June term, 1873.

EXTRACT FROM MINUTE-BOOK.

"FOURTH DAY, *Wednesday, June* 19, 1873.

In the cause in equity, Lucinda James, administratrix, vs. Atlantic De Laine Company, Justice Clifford delivered an opinion.

Ordered, that the cause be recommitted to the master, with instructions to state the accounts between the parties in accordance with the rules and directions contained in the opinion of the court just delivered in the case, and to report the result to the court as soon as may be."

A true copy from the original.

Attest:

HENRY PITMAN,
Clerk Circuit Court.

747 The closing portion of the opinion of the honorable court sets forth the rules and directions in accordance with which the account is now to be stated between the parties. It is as follows:

"Governed by these considerations, the court will send the whole case to the master, with more specific instructions for a new report, and for a statement of the accounts between the parties in respect to the mortgage-debt. Under the decretal order the complainant is entitled to redeem the mortgaged property just as her intestate might have done if the settlement and release mentioned in the decretal order had never been executed. Set aside as the release and settlement have been, as having been obtained by fraudulent representations and concealment, it is clear that the complainant is entitled to have an account against the respondents as against mortgagees wrongfully in possession, including the net and annual profits of the property, without being accountable for the losses of subsequent years. All sums due to the mortgagee will first be charged to the mortgaged estate, as ascertained from the agreements and actual dealings of the parties, whether advanced to the actual mortgagor or his assignee. Having ascertained the unpaid balance of the mortgage-debt, including interest to the present time, the master will next proceed to take an account of the net earnings of the mortgaged property, as against a mortgagee wrongfully in possession, deducting insurance, taxes, repairs, including ordinary improvements, such as relate to the operative machinery and the motive-power of the mill, and including all the net earnings subject to those deductions, whether actually declared as dividends or not, and however the same may have been expended or appropriated. Earnings of one year are not to be set off by the losses of a subsequent year, as the respondents are to be treated as mortgagees wrongfully in possession; but, in ascertaining the earnings of a particular year, the losses of that year are to be deducted from the gross earnings in order to ascertain the net earnings of the year, as well as the cost of insurance, taxes, repairs, ordinary improvements, running expenses, and commissions. Shares
748 of the stock paid, the complainant is entitled to recover in specie, but the complainant is not entitled to recover the thirty-seven shares never paid, as it cannot be said that those shares are wrongfully in the possession of the respondents. Nothing having been paid for the same, the court is of the opinion that no recovery can be had on account of those shares.

"Estimates of earnings will be made on the basis of shares paid, without including those not paid, and the master, on stating the accounts, will be governed by the principles herein laid down, and will deduct the amount of the unpaid mortgage-debt from the amount of the earnings of the mortgaged property, adjusting interest to the present time, and state the exact amount which the complainant is entitled to recover. Interest upon the total amount of profits earned prior to the date of the decretal order will be computed from the date of that order to the completion of the report of the master. Profits earned subsequently to the date of the decretal order will only bear interest from the close of the last year included in that computation. Power is vested in the master to call for new accounts and to hear the parties further if necessary to enable him to state the account as required, and he will submit his draft report to them, as required by the rules."

The master respectfully reports:

On the 7th of July, 1873, upon notice from the master, the parties, by their respective counsel, appeared before him. An order was made upon the respondents to file accounts of the results of the business of the Atlantic De Laine Company for the year 1872, and also for the first six months of the year 1873, if practicable, in order to bring the accounting

as near as possible to the present time. Results of business for previous years had already been filed.

The account of results of business for year 1872, marked QQ, was filed August 16, 1873. The accounts of business for first six months of year 1873, not being made up, and it not being possible so to do as yet, the result showing gain or loss does not appear.

749 An adjournment was then taken to meet at call of the master, to give complainant an opportunity further to examine the books of respondents with reference to accounts already filed. Sundry meetings were subsequently held.

On the 23d of August, 1873, the complainant filed the paper marked "S S." In accordance with the motion therein contained, the respondents filed an account, marked "TT," of the salaries therein referred to, subject to the ruling of the master as to complainant's claim touching the same. The complainant also, on such last-mentioned day, filed the paper marked "R R."

Subject to the claim of complainant in regard to salaries, and the claim touching the distribution of stock and company notes to certain stockholders on October 10th, 1861, as commissions for endorsing and accepting the drafts and other commercial paper of the company from time to time, the complainant consented, on the 26th of August, 1873, for the purposes of this accounting, to accept the returns of gains and losses as heretofore rendered by respondents.

On the 2d of September, 1873, the hearing was closed upon both sides, the complainant and respondent respectively presenting to the master claims in writing as to his report under the present order and instruction of the court and the evidence now before him, complainant's paper being marked "U U" and respondents' "V V."

The claim of the complainant that she should be credited with her fractional proportion of salaries paid to the officers of the corporation is overruled, the master considering that they have been properly charged by the company as legitimate expenses of the business in making returns of annual gains or losses.

The complainant further claims to be credited, as part of the net earnings, her fractional part of the amount paid certain stockholders as commissions, October 11, 1861, for endorsing for the company, that amount being $231,371.65, which was paid in shares of the company, 186 shares at par, $1,000 each, and notes of the company, $45,571.65.

750 The master is satisfied from the evidence before him, and finds that the condition of the company at the date of the instruments of release and settlement was such that it was compelled to resort to the credit of the stockholders. That it was necessary, in order to enable the company to procure the requisite funds to carry on their business, to obtain endorsers upon their paper offered for discount. That the usage of the banks in the city of Providence required endorsers. That the business of the company required means in excess of what might be obtained by the usual advances on goods. That it was understood and agreed between the stockholders that they should from time to time, as needed and required, endorse and accept for the company, for which they were to be compensated whenever the company should be in a position so to do. That, in pursuance of this understanding and agreement, the endorsements and acceptances were so made, and the above payment made to them as such compensation as aforesaid.

The master further finds that the company never complied with the requirements of the laws of Rhode Island so as to exempt the stockholders from individual liability for the debts of the company. And the

individual stockholders were thus by the terms of the law jointly and severally liable for all the debts of the company. In view of this last fact, the master does not feel authorized, under the present order of reference, to consider the payment as part of the legitimate expenses of the business, and therefore allows the complainant's claim that it should be considered as part of the net earnings of the company.

If the allowance of this claim of complainant should be deemed erroneous by the court, the proper amount, viz, $187,924.06, being $\frac{113}{237}$ of $231,371.65, with interest from October 11th, 1861, to July 1st, 1873, can be readily struck from the balance found in favor of the complainant.

It appears from the testimony before the master that the whole amount so paid in stock at par and notes of the company was
751 charged as legitimate cash expenses of the business in 1861, and this diminished by so much the returns of profits before the master for that year. It is manifest that, if rejected as legitimate expenses, they must be added under this order to the gains reported in determining the share of the complainant. If properly chargeable as expenses, the rate and amount paid during those years on the large amount of paper accepted or endorsed does not, to the master, seem unreasonable.

The property originally mortgaged by Charles T. James appears in first report. The balance due under the mortgage account, March 2, 1853, viz, $43,092.58, with interest to July 1, 1873, will be stated as a separate item in the account, as well as all other sums due mortgagee, as heretofore done.

All that could be realized from the mortgaged property, other than the 113 shares of the stock of Atlantic De Laine Company, was realized prior to the date of the instruments of release and settlement.

Amounts thus realized are credited complainant on said mortgage account.

The mortgaged property, at the date of said instruments of release and settlement was, therefore, 113 shares of the stock of the Atlantic De Laine Company.

The condition of the company March 1, 1853, appears to have been as follows:

Liabilities, including capital stock, $237,495.33	$842, 503 44
Assets	$772, 176 03
For account of loss	70, 327 41
	$842, 503 44
Showing capital stock impaired this date	$70, 327 41
Assets, December 31, 1869	$5, 062, 832 54
Liabilities not including capital stock, same date.	$4, 384, 270 92

752 Detailed statement of assets and liabilities in master's original report:

The cost to the company, up to 1858, of the first mill and machinery, and buildings connected therewith, was	$491, 281 91
Of this amount there was charged off in 1858 and 1859 to profit and loss, in order to reduce it to its actual value.	$191, 281 91
Thus reducing cost on books to	$300, 000 00
In addition to the cost of first mill, machinery, and buildings, there was expended in improvements and additions down to January 1, 1868	$1, 474, 522 50
Construction-account, that date	$1, 774, 522 50
Still farther similar expenditures were made subsequently, so that construction-account had grown December 30, 1872, to	$2, 300, 001 63

The construction-account, as it stood in the different years from 1862 to 1872, is given in the testimony of Robert E. Northam, showing successive investments and enlargement of property of the company from accumulated earnings, or incurring debts, or both, as follows:

Construction-account—	1862	$300,000 00
" "	1863	492,581 50
" "	1864	1,084,264 73
" "	1865	1,388,570 22
" "	1866	1,704,113 17
" "	1867	1,774,522 55
" "	1868	1,805,584 14
" "	1869	2,054,524 07
" "	1870	2,093,994 79
" "	1871	2,129,914 23
" "	1872	2,300,001 62

753 All the foregoing accounts are now stated at request of respondents. But the master does not feel justified in making the use thereof which respondents claim.

In determining the net earnings of these 113 shares to be further credited complainant, the master finds nothing in the instructions of the court to warrant him in doing what the respondents ask, viz, to credit the complainant only with her certain share of such portion of the annual gains shown by the returns of the corporation as the property of the corporation, at the date of the instruments of release and settlement, might bear to the property of the corporation in each subsequent year as enlarged and increased by investments, and as shown by the construction account in each year, or otherwise.

It may be true that the earnings have been greatly enhanced by the enhanced capacity and value of the property arising from these investments, but, nevertheless, the master understands, by the instructions, that the complainant is to be credited with her share of all net earnings of the company, whether declared as dividends or not, and however the same may have been expended or appropriated, the net earnings of each year being made up in accordance with the principles laid down in the opinion of the court, that is, with such deductions from the gross earnings as are enumerated therein.

Other than in respect to salaries and commissions charged as above mentioned, neither party has endeavored to modify the returns of annual net gains as not being made up in accordance with said principles. The master must, therefore, for the purposes of this accounting, take these returns as giving correctly such net earnings of the corporation business for the respective years, and credit the complainant with her share in proportion to shares of stock owned and paid for her, viz, 113 out of 237.

In the master's original report, for reasons therein stated, the theory of accounting finally adopted, though not the one adopted at the
754 beginning of the hearing, was simply to take the state of the accounts as they stood between the parties at the date of the instruments of release and settlement, viz, the contract and mortgage accounts, and with the proper interest account to the date of said accounting, viz, January 1st, 1870, find the balance one way or the other. If a balance found due the complainant, to be paid by the respondents, with a transfer of such number of shares as she should be found entitled to. If a balance found due to the respondents, upon payment thereof by the complainant, to take the stock, with all the rights appertaining thereto as a

stockholder touching the management of the corporation business and affairs. In other words, the accounts produced by the respondents upon the order of the master, on motion of the complainant, at the beginning of the hearing, showing the management, condition, and results of the business of the Atlantic De Laine Company in the years subsequent to date of instruments of settlement, were not considered by the master in arriving at the balance aforesaid; the master conceiving that only in so far as dividends of profits may have been actually declared by the company, set apart and annexed to the complainant's stock, should the same be credited to the complainant in the accounting to diminish or extinguish the debt due the respondents under the mortgage or otherwise. That whether there had been mismanagement in the *the* business of the corporation in not making dividends or in other appropriation of gains and profits, was for the court to say upon a proper bill filed as stockholder, in which all parties would be heard and their respective rights therein determined and settled.

The report was subsequently recommitted to the master by the court, with instructions to make a supplemental report, giving summary statements of results arrived at by the master upon each theory, viz, one as above, in which no consideration was had of the business of the corporation, and the other in which the same should be considered to vary the state of the accounts as the master should determine therefrom.

Thereupon the master filed such supplemental report.

755 No consideration of results of subsequent business and management of corporation being had, account was stated thus:

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, January 1, 1872.

DR.

For balance due under contract account	$25,075 42

CR.

By amount of account of Atlantic De Laine Company against Lyman B. Frieze, assignee, belonging to estate of Charles T. James to pay	$110,954 14
By balance due under mortgage-account	$90,647 05
By amount paid William Mason & Co. in settlement of bond	$11,542 19
Showing balance due Atlantic De Laine Company, January 1st, 1872	$188,067 96

Consideration being had of results of subsequent business and management of corporation, account was stated thus:

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, January 1, 1872.

DR.

For balance due under contract-account	$25,075 42
For $14\frac{3}{23}$ of $231,371.65 distributed to stockholders October 10th, 1861, with interest to January 1st, 1872	$177,976 88

CR.

	By amount of account Atlantic De Laine Company against Lyman B. Frieze, assignee, belonging to estate of Charles T. James to pay	$110,954 14
756	By balance due under mortgage-account	$90,647 05
	By amount paid William Mason & Co. in settlement of bond	$11,542 19
	By $\frac{11}{23}\frac{3}{7}$ of $47,250.00, amount paid into the company as assessments by certain stockholders, October 5, 1855, with interest to January 1st 1872	$43,138 55
	Showing balance by this account due Atlantic De Laine Company, January 1, 1872	$53,229 63

It will thus be perceived that the only difference made by the master between the two statements, after a scrutiny and consideration of the accounts showing results of business of corporation, &c., was the addition of two items, one on the debit and one on the credit side of second statement, viz, charging the Atlantic De Laine Company with $\frac{11}{23}\frac{3}{7}$ of a certain distribution to stockholders, October 10, 1861, which the master, for reasons in supplemental report stated, concluded to treat as a dividend, and crediting company with $\frac{11}{23}\frac{3}{7}$ of an amount paid into company as assessments by certain stockholders, October 5, 1855. The master had found that C. T. James was the owner of $\frac{11}{23}\frac{3}{7}$ of the capital stock of the company.

It appeared that no dividends had ever been declared by the company, and that the gains and profits, when made, had from time to time been expended in permanent improvements upon the property. The master did not therefore deem it right, on this theory of accounting, even to credit the complainant with her proportionate share of all gains and profits thus expended, she taking with her stock all these improvements arising out of such investment of gains and profits.

The report is now to be made up crediting the complainant with her proportionate share of net gains and profits, whether declared as dividends or not, arrived at and determined from the accounts, in accordance with above instructions and directions of the honorable court.

757 The opinion calls for no revision of the items constituting the mortgage and other debts due respondents, as already reported, other than bringing the interest account to the present time, although power is given to the master to hear the parties further if he should desire it. The parties have expressed no wish for further hearing on that part of the account. The master does not deem any called for.

Crediting complainant with her proportionate share of net gains and profits determined in the mode and according to the principles of the opinion of the honorable court, being the only change to be made in the account as heretofore stated, the master, for convenience and ready reference in the report, has recited as above the two summary statements.

The master will proceed to state the account in accordance with the instructions aforesaid:

	The respondents are to be charged, firstly, with the balance due complainant under contract-account, with interest to July 1, 1873, viz	$26,089 09

Respondents are also to be charged with $\frac{113}{237}$ of the net earnings, determined in accordance with said instructions, whether actually declared as dividends or not, and however the same may have been expended or appropriated; earnings of one year not to be set off by the losses of a subsequent year.

The following is a statement of the results of the business of the company down to January 1, 1873, as returned:

Losses.		Gains.	
Loss to Dec. 31, 1852..	$65,551 92		
" " in 1853..	11,305 61		
" " " 1854..	3,930 05		
		Gain in 1855..	$29,983 50
		" " 1856..	42,026 01
		" " 1857..	4,193 67
		" " 1858..	42,816 65
		" " 1859..	106,590 95
758		Gain in 1860..	98,318 04
		" " 1861..	108,180 30
		" " 1862..	360,827 92
		" " 1863..	320,738 09
		" " 1864..	111,444 13
Loss in 1865..	846 92		
" " 1866..	288,191 94		
" " 1867..	124,479 52		
		Gain in 1868..	273,129 21
Loss in 1869..	199,048 45		
" " 1870..	312,308 43		
" " 1871..	55,636 34		
" " 1872..	36,324 25		
Aggregate loss.....	$1,097,623 43		$1,498,248 47

Add for amount distributed as above for commissions, which diminished return of gains for 1861	231,371 65
Aggregate gains.....	$1,729,620 12
Earned prior to decretal order	$1,456,490 91
" since, in 1868.....	$273,129 21
By the instruction of the honorable court, interest is to be charged upon the complainant's share of the total amount of profits earned prior to the date of the decretal order, viz, November 25, 1867, from the date of said order. That amount is.....	$1,456,490 91
$\frac{113}{237}$ of $1,456,490.91 is.....	$694,445 03
Interest from Nov. 25, 1867, to July 1, 1873, is.....	233,333 53
Constituting the second item with which respondents are to be charged.....	$927,778 56

759 Upon profits earned subsequently to date of said decretal order, interest from close of last year included in that computation. The only profits subsequent to that date are for year ending Dec. 31, 1868, viz..... $273,129 21

$\frac{11}{23}\frac{3}{7}$ of $273,129.21 is..... $130,226 16
Interest from Dec. 31, 1868, to July 1, 1873, is..... 35,161 06

Constituting third item with which respondents are to be charged..... $165,387 22

The respondents are to be credited in the accounting with all sums due to the mortgagee, whether advanced to the mortgagor or his assignee.

These sums the master finds as follows:

First. The amount of the account of the Atlantic De Laine Company against Lyman B. Frieze, assignee, advanced to complete contract belonging to the estate of Charles T. James to pay, with interest to July 1, 1873, viz..... $115,664 20

Second. Balance due under mortgage-account, with interest to July 1, 1873, viz..... $94,046 53

Third. Amount paid William Mason & Co. in settlement of bond of Frieze, assignee, with interest to July 1, 1873, viz..... $12,131 69

Fourth. $\frac{11}{23}\frac{2}{7}$ of $47,250.00, amount paid into company by certain stockholders, October 5, 1855, with interest to July 1, 1873, viz..... $45,155 04

RECAPITULATION.

Atlantic De Laine Company in account with estate of Charles T. James, deceased, Lucinda James, administratrix, July 1, 1873.

760 DR.

For balance due under contract-account, July 1, 1873.. $26,089 09
For $\frac{11}{23}\frac{3}{7}$ of $1,456,490.91, total net profits earned prior to decretal order, Nov. 25, 1867, with interest from said date to July 1, 1873..... 927,778 56
For $\frac{11}{23}\frac{3}{7}$ of $273,129.21, net profits earned subsequent to date of decretal order, viz, in 1868, with interest from December 31, 1868, to July 1, 1873..... 165,387 22

$1,119,254 87

CR.

By amount of the account of Atlantic De Laine Company against Lyman B. Frieze, assignee of Charles T. James, advanced to complete contract belonging to estate of Charles T. James to pay, with interest to July 1, 1873..... $115,664 20
By balance due under mortgage-account, with interest to July 1, 1873..... 94,046 53

By amount paid William Mason & Co. in settlement of bond of Frieze, assignee, with interest to July 1, 1873	12, 131 69
By $\frac{113}{237}$ of $47,250.00, amount paid into the company as assessments by certain stockholders, October 5, 1855, with interest to July 1, 1873	45, 155 04
	266, 997 46
Total debit	1, 119, 254 87
" credit	266, 997 46
Balance due complainant	$852, 257 41

Respectfully submitted.

CHAS. HART, *Master.*

761 On the 13th of September, 1873, the master submitted to the parties a draft of his report. On the 25th day of September, 1873, the parties respectively filed their objections to said draft report with such references to the evidences before the master in support of the same as they saw fit. After considering the same, the master, in view of the third objection of the respondents, modified the draft by substituting the following paragraph:

"The complainant further claims to be credited as part of the net earnings her fractional part of the amount paid certain stockholders as commissions, October 11th, 1861, for endorsing for the company, that amount being $231,371.65, which was paid in shares of the company, 186 shares at par, $1,000 each, and notes of the company, $45,571.65.

"The master is satisfied from the evidence before him and finds that the condition of the company at the date of the instruments of release and settlement was such that it was compelled to resort to the credit of the stockholders; that it was necessary, in order to enable the company to procure the requisite funds to carry on their business, to obtain endorsers upon their paper offered for discount; that the usage of the banks in the city of Providence required endorsers; that the business of the company required means in excess of what might be obtained by the usual advances on goods; that it was understood and agreed between the stockholders that they should from time to time, as needed and required, endorse and accept for the company, for which they were to be compensated whenever the company should be in a position so to do; that, in pursuance of this understanding and agreement, the endorsements and acceptances were so made, and the above payment made to them as such compensation as aforesaid.

"The master further finds that the company never complied with the requirements of the laws of Rhode Island so as to exempt the stockholders from individual liability for the debts of the company. And the individual stockholders were thus by the terms of the law jointly and severally liable for all the debts of the company. In view of this
762 last fact, the master does not feel authorized under the present order of reference to consider the payment as part of the legitimate expenses of the business, and therefore allows the complainant's claim that it should be considered as part of the net earnings of the company"—.

for the following paragraph in said draft—

" The claim of the complainant to be credited as part of net earnings, her fractional part of the amount paid certain stockholders as commissions October 11th, 1861, for endorsing for company, is allowed as originally; though originally, and now, with some doubt and hesitation upon all the evidence in relation thereto. Undoubtedly the condition of the company and its credit were such at the date of the instrument of release and settlement that it was compelled to resort to the credit of its stockholders. But the stockholders of the company were severally liable for the debts of the company, they never having complied with the provisions of the laws of Rhode Island to exempt the stockholders from individual liability; and it may be said that in endorsing for the company, they in no manner enlarged their liability. On the other hand, it may be said that the liability of stockholders is quite different in character from that of an endorser. The creditors are obliged under the statute to work out their remedy against stockholders through the corporation; that judgment must first be obtained against the corporation before execution could be levied upon the property of stockholders, or the creditors must proceed by bill in equity against all the stockholders; that by endorsing the paper of the company, if dishonored, they became directly liable to the holders thereof; that notwithstanding this statute liability the company were obliged to procure endorsers to obtain discounts as certainly and regularly as though no such liability of stockholders existed; that the service rendered was for the benefit of all stockholders, and ought to be fairly compensated"—

—in order to state more clearly the conclusions of fact arrived at by him touching the payment to stockholders for endorsing and accepting the company paper.

763 All other objections of the parties were overruled, and the report now made to the honorable court is in all other respects the same as said draft. The said objections of the complainant and respondents are hereto annexed, the complainant's being marked " W W;" the respondents' " X X;" together with the evidence referred to by the parties respectively.

C. HART, *Master.*

[W W.]

Complainant's objections to draft report of master.

The above-named complainant objects to the draft report of the master as follows:

First. Because the master hath overruled the claim of the complainant, and hath not reported that $\frac{11}{237}$ of the amount paid as salary to the treasurer of said defendant corporation, and to George W. Chapin, who has been, since the office was created, the president and general agent, should be added to the net earnings of the defendant corporation, with interest thereon, to be computed in the same manner as interest is directed to be computed, by the order of the court, on net earnings.

Second. Because the master hath credited the defendants and hath admitted into his accounts, as one of the items with which the estate of Charles T. James should be charged, the sum of $45,155.04, being $\frac{11}{237}$ (with interest thereon) of $47,250.00, paid by certain stockholders to said corporation as assessments upon the shares of said corporation held by said certain stockholders, October 5th, 1855, when the assessment by virtue of which said sum was paid was illegal and void, and had been so declared by the supreme court of the State of Rhode Island.

764 Third. Because the master hath included in his statement of account as between the complainant and the Atlantic De Laine Company, and hath charged against the complainant and credited the defendants with the amount of said company's claim against Frieze, assignee, on the contract-account, which is not a claim against the complainant in her capacity as administratrix of her husband, the mortgagor, seeking to redeem the mortgaged estate, but is a claim secured under the instrument of assignment and against the estate of the assignor in the hands of his assignee.

Fourth. Because the master hath included in his statement of account as between the complainant and the Atlantic De Laine Company, and hath charged against the complainant and credited the defendants with the amount paid William Mason & Co. in settlement of bond, which is not a claim against the complainant in her capacity as administratrix of her husband, the mortgagor seeking to redeem the mortgaged estate, but is a claim secured under the instrument of assignment and against the estate of the assignor in the hands of his assignee.

Fifth. Because the master hath incorporated into and made part of his draft report the statement made and sworn to before him by the treasurer of said defendant corporation in the course of the proceedings had before him prior to the coming in of his first report in this cause, of the condition of the defendant company March 1st, 1853, notwithstanding the fact that the court, by the opinion last delivered, (and in accordance with the directions and instructions therein set forth, the master is directed to state the accounts between the parties,) have declared that the statement of January 1st, 1853, which was, and is, substantially the same as that so as aforesaid incorporated into the draft report of the master, "was erroneous in large amounts," and, "not only was false, but was furnished with the intent to deceive and defraud." And she submits that said statement, so incorporated
765 into and made part of the draft report of the master, should be wholly stricken from the same, and she objects to the inclusion and incorporation thereof into the same.

And, further, the complainant, in support of her claim, as allowed by the master, to the commission distributed in 1861, in stock and notes, to which objection is made by defendants, refers to the evidence heretofore reported by the master, and to the testimony of Samuel C. Blodgett, and the exhibit thereto annexed, as taken before said master during the recent hearings had before him.

By her solicitor, J. H. PARSONS.

[XX.]

Respondents' objections to draft report of master.

The respondents, to whom has been submitted the draft report of the master under the order of the court passed, submit the following objections thereto:

These respondents submit that it was error in the court not to pass specifically upon the exceptions heretofore filed by the parties, respectively, to the original and supplemental reports, and either to sustain or overrule the same, and not waiving but insisting on their right to be heard upon such exceptions, and to have the decision of the court upon the same and upon each and every of the same. They object to the report of the master, a draft of which has been submitted to them.

First. Because the master hath refused to allow the sum of two hundred thirty-one thousand three hundred and seventy-one sixty-five hundredths dollars in cash and stock distributed to other stockholders as commissions for endorsing the paper of the company, as a part of the legitimate expenses of the company.

766 Second. Because, if the master holds that such distribution of cash and stock is not a part of the legitimate business of the company, it is substantially a ruling by him that such distribution was an unlawful act, and the proper mode of repairing the wrong is to restore what was thus distributed to the company, to the end that the stock may be cancelled and the complainant may have her proportion of the cash only; and the master ought to have so reported.

Third. Because the master hath stated what considerations may be urged in favor of and against said claim, whereas he should, and we request that he do so change and amend his report as to state his conclusions of fact from the evidence before him relating to the subject-matter of his claim.

In support of these objections and requests, the respondents refer to the evidence before the master, and specifically cited in the exceptions to his ruling upon this subject in his supplemental report heretofore made.

Fourth. Because the master hath not in his report distinguished between the earnings on mortgaged property as it existed at the date of the settlement and earnings upon other property, whether acquired from invested earnings on the mortgaged property or from other sources, and in support refers to the testimony of R. E. Northam.

ATLANTIC DE LAINE CO. ET ALS.,
By A. PAYNE, *Solicitor.*

767 EXHIBITS BEFORE THE MASTER.

[Q Q.]

Account results of business, 1872.—*Filed August* 16, 1873.

Atlantic De Laine Company. Result of business for 1872.

Loss $36,324 25

R. E. NORTHAM, *Clerk.*

Subscribed and sworn to before me, this 2d day of September, 1873.
C. HART, *Master.*

[R R.]

Statement of complainant's counsel.—Filed August 23, 1873.

The undersigned state to the master that the delay which has occurred in proceeding before him has been caused by the now somewhat protracted illness of their associate, Mr. Jenckes.

To avoid further delay, and to enable the master, if possible, to complete his report in time for the action of the court thereon, as soon as such action can possibly be had, they state, that acting under the specific instructions of the complainant and of the children and
768 heirs of her intestate, they will themselves proceed to present

certain testimony derived from the books of defendant corporation, and certain considerations touching the amount of damages to be reported under the instructions last given by the court, and they will ask the ruling of the master upon certain questions which they will submit, based upon said evidence.

J. H. PARSONS,
C. CUSHING,
For Complainant.

[S S.]

Motion for salary account.—Filed August 23, 1873.

The complainant respectfully submits to the master that under the order of the court, based on the opinion recently delivered, she should be credited with the proportion of salary paid the treasurer of said defendant corporation from and after March 2d, 1853, up to November 25th, 1867, (and with interest thereon from and after that date,) at the rate of $\frac{113}{237}$ thereof.

And also, that from and after that date she is entitled to the same proportion and at the same rate of the annual salary paid said treasurer, and also, since the office was created, the same proportion of the annual salary of the president and general agent, with interest thereon to July 1st, 1873; and she moves that said defendant corporation be required to state the amounts of said salaries.

And she respectfully requests the ruling of the master upon the question herewith submitted.

By her solicitors,

JAMES H. PARSONS,
C. CUSHING.

769 [T T.]

Salary account.—Filed September 2, 1873.

MEMORANDA SALARIES PAID. Geo. W. Chapin, treasurer, president, and general agent:

From March 2, 1853, to December 31, 1853, at rate per annum of	$3,000
For 1854	$3,000
" 1855	$3,000
" 1856	$3,000
" 1857	$3,000
" 1858	$5,000
" 1859	$5,000
" 1860	$5,000
" 1861	$8,000
" 1862	$8,000
" 1863	$8,000
" 1864	$8,000
" 1865	$9,000
" 1866	$10,000
" 1867	$10,000
" 1868	$10,000
" 1869	$10,000

" 1870	$10,000
" 1871	$10,000
" 1872	$10,000
" 6 months ending June 30, 1873	$5,000

Thos. A. Doyle, treasurer. Amount paid him for services:

From February 5, 1870, to December 31, 1870	$7,221 36
For 1871	$11,769 75
" 1872	9,744 56
" 6 months ending June 30, 1873	4,185 18

R. E. NORTHAM, *Clerk.*

Subscribed and sworn to before me this 2d day of September, 1873.
C. HART, *Master.*

770 [U U.]

Complainant's claims before master.

The complainant in the above-entitled suit, upon the evidence before the master, respectfully makes the following claims:

First. That in accordance with the opinion of the court last delivered, and the terms of the order made thereon, she is entitled to $\frac{113}{237}$ of the salaries appearing to have been paid to the treasurer of the defendant corporation, with interest thereon, to be computed in the manner directed by said opinion and order regarding net earnings.

And also, since the creation of the office of president and general agent in January, 1870, to the same proportion, with interest to be computed in the same manner of salaries paid said president and general agent.

Second. That she is entitled, in accordance with the opinion of the court last delivered, and the order made thereon, and on the evidence before the master, to $\frac{113}{237}$ of the sum of $231,371.65, distributed as commissions October 11th, 1861, with interest thereon to be computed in the manner directed by said opinion and order regarding net earnings.

Third. That she is entitled to $\frac{113}{237}$ of the net and annual profits of said defendant corporation as sworn to before the master, to wit, the net earnings of said corporation so as aforesaid sworn to from and after the date of the instruments of release and settlement which were set aside for fraud and fraudulent representations and concealments, and with interest thereon to be computed as directed by the opinion of the court and the order made thereon.

And she claims that she is so entitled under the opinion last delivered and the order made thereon.

771 And she submits her claims so as aforesaid to the master.

By her solicitors,

JAMES H. PARSONS,
CALEB CUSHING.

Testimony of Samuel C. Blodgett.

AUGUST 26, 1873.

SAMUEL C. BLODGETT, sworn and examined by Mr. Parsons:

Q. Did you keep the books of the Atlantic De Laine Company in the year 1861?

A. I think I did; I am not sure. I was absent a year or more. I could tell by looking at the books.

Q. State whether the entries on pages 364, 365, and 366 of journal B, are in your handwriting.

A. Yes, sir.

Q. Will you look at the entry dated Friday, October 11th—beginning "Commission account to sundries"—and state whether or not that and the entries following, down to page 366, including the entry headed "Atlantic De Laine Co. stock account to profit and loss," do or do not refer to and contain, so to speak, a history of the transaction consisting in the payment of the commissions to the various members of the corporation?

A. I should say it did, sir.

Q. It appears from those entries that part of these commissions were paid in stock and part by notes of the company, which it has heretofore been shown were subsequently paid. Would the notes and the cash payments made upon them at their maturity be included in the profits of any year?

A. Yes, I should say unhesitatingly they did; that they came into the business of the year.

772 Q. Were they deducted from the profits, or were they included in the profits?

A. If there were any profits, they came out of the profits; if there were no profits, they went the other way. Whether there were profits or not, I should say they went into the business of the company, and if the company made any money in any year it came out of the profits. It was just as much a part of the business as it would be in making the goods at the mill and sending them to the agents, and selling them. How it came out at the end of the year, of course I cannot tell without going through with it.

Examined by the master:

Q. Are those entries upon the books in relation to the distribution of stock and money by way of payments for commissions alluded to and pointed out to you, and which you say are a history of the transaction as it appears on the books, so made that in making up an account of the gains and profits, or the results of the business for the year in which those payments were made, the gains or profits would be affected by those entries?

A. I should say unquestionably they would be. I will remark that, of course, in going back to an account of this kind, merely the fact of seeing my own entries satisfies me in one sense that it is all right, but to give a decided answer to all these questions I should want to look into the matter more than I have now. I recall all these transactions very distinctly, but the mode of getting them up I do not remember distinctly at this moment.

Q. They would be considered a part of the expenses of the business, diminishing the gains and profits for the year?

A. I won't say confined to that year strictly, for I don't know how the Atlantic De Laine Company stood previous to this entry, whether they were minus or ahead. But what I mean to say is, that it would come out of the profits or loss of the business.

Q. These entries are all in one year, are they not?

773 A. Yes, they are all under one date—the 11th of October, 1861.

Q. Before determining the gains in the year 1861, by the books and the

entries thereon, these charges would come out before you would make a statement of what the results of the business had been?

A. Yes, at the end of December, for the six months preceding. It would all appear at the end of the year. I would remark in regard to making up the accounts of the Atlantic De Laine Company, I used to have my books open for three or four months before I could make a single entry on the journal. It would be in consequence of the stock-account at the mill, or the stock in agents' hands. My books would be kept open for several months, so that it is very likely that by the trial-balance I could tell when the accounts for 1861 were made up. I always had a memorandum on my trial-balance of the time when I made up the accounts.

Q. If you should see a statement of the results of the business of the Atlantic De Laine Company for the year 1861, giving a certain amount as net gain made in that year from that business, you would expect that the amount thus shown had been diminished by the amount distributed of stock and money, as appears by these entries? In other words, the amount would have been so much larger if it had not been for that?

A. I take it that commission account came out the same as any other expense.

Q. That is your understanding from looking at those entries?

A. Yes, sir; that is my understanding.

774 EXHIBIT A.—*Annexed to testimony of Samuel C. Blodgett, marked S. C. B., No. 1, agreed to be true copy from the books of Atlantic De Laine Company, respondents.—C. H.,*

JOURNAL B.

FRIDAY, 11 OCTOBER, 1861.

					Page 363.	
247		Commission account. To sundries:				$184,695 89
		For the following amount of commissions for accommodation acceptances by the following parties:				
	54	Hoyt & Tillinghast:				
		For 2½ per cent. on $82,500 from July, 1851, to December, 1851		$2,062 50		
	179	Hoyt, Tillinghast & Co.:				
		For 2½ per cent. on $1,818,000 from January, 1852, to Dec., 1858		45,450 00		
	236	Hoyt, Sprague & Co.:				
		For 2½ per cent. on $982,837.55 from January, 1859, to June, 1864		24,570 94		
	163	A. Tucker, jr., & Lewis Mills, surviving partners late firm D. T. & Co.:				
		For 2½ per cent. on $188,450 from May, 1851, to December, 1853		4,711 25		
	162	Tucker, Newton & Mills:				
		For 2½ per cent. on $313,500 from January, 1854, to December, 1856		7,837 50		
	235	Tucker, Newton & Co:				
		For 2½ per cent. on $881,000 from January, 1856, to July, 1861		22,025 00		
		For the following amount of commissions for endorsing our drafts by the following parties:				
	120	Globe Printing Co.:				
775		For 1 per cent. on $1,108,700 from November, 1851, to Dec., 1853		$11,087 00		
	78	George W. Chapin:				
		For 1 per cent. on $5,748,670 from December, 1853, to June 30, 1861		57,486 70		
	79	Josiah Chapin:				
		For 1 per cent. on $946,500 from January, 1855, to June 30, 1861		9,465 00		
231		Interest. To sundries:				$184,695 89 $44,513 52
		For interest on above commissions to June 30, 1861:				
	54	Hoyt & Tillinghast	For amount interest on	$2,062 50		
	179	Hoyt, Tillinghast & Co	" " "	45,450 00	1,371 56	
	236	Hoyt, Sprague & Co	" " "	24,570 94	14,316 75	
	163	A. Tucker, jr., & Lewis Mills, surviving partners late firm D., T. & Co	" " "	4,711 25	1,913 16	
	162	Tucker, Newton & Mills	For amount interest on	7,837 50	2,457 32	
	225	Tucker, Newton & Co	" " "	22,025 00	2,958 84	
	120	Globe Printing Co	" " "	1,108,700 00	3,696 53	
	78	George W. Chapin	" " "	5,748,670 00	5,280 27	
	79	Josiah Chapin	" " "	946,500 00	11,117 94	
					1,401 25	
					4,4513 52	

FRIDAY, OCTOBER 11, 1861. Page 364.

163		A. Tucker, jr., & Lewis Mills, surviving partners late firm D., T. & Co.:				
		To sundries				
		For amount this account transferred as follows:				7,168 57
776	163	A. Tucker, jr., and estate late J. C. Dodge:				
		For ½ of above amount transferred to this account			$5,376 43	
	163	Lewis Mills, surviving partner late firm D., T. & Co.:				
		For ¼ of above amount transferred to this account			1,792 14	

	89	Sundries. To stock account							$63,000 00
79		For 63 shares in the capital stock in the Atlantic De Laine Co., issued this date to the following parties in settlement in part of their charges for commissions:							
120	.....	Josiah Chapin, for 4 shares, Nos. 238 to 241, per certif. No. 42, a $1,000						4,000 00	
78	.....	Glob Printing Co., 16 " " 242 " 257, " " 43, a 1,000						16,000 00	
163	.....	George W. Chapin, 42 " " 258 " 299, " " 44, a 1,000						42,000 00	
	.....	Lewis Mills, surviving partner, &c., for 1 share, No. 300, per certificate No. 45, a $1,000						1,000 00	
	102	Sundries. To Atlantic De Laine Co., stock-account:							
163		For 123 shares in the capital stock in Atlantic De Laine Co., and belonging to said company, transferred to the following parties in settlement in part of their charges for commissions:							
164	.....	A. Tucker, jr., surv'g partner late firm D. T. & Co., for 5 shares, a $1,000						5,000 00	
235	.....	Tucker, Newton & Mills, " 10 " a 1,000						10,000 00	
54	.....	Tucker, Newton & Co., " 23 " a 1,000						23,000 00	
777	.....	Hoyt & Tillinghast, " 3 " a 1,000						3,000 00	
	179	..... Hoyt, Tillinghast & Co., " 59 " a 1,000						59,000 00	
	236	..... Hoyt, Sprague & Co., for 16 shares, a $1,000						$16,000 00	
163	79	..... Josiah Chapin, " 6 " a 1,000						6,000 00	
231	.....	Lewis Mills, surviving partner, &c., " 1 " a 1,000						1,000 00	
	.....	Interest. To sundries:							
		For amount interest on balances of commissions accounts to the following parties:							
	54	Hoyt & Tillinghast,	For 8 months int. on	$434.06				17,36	
	179	Hoyt, Tillinghast & Co.,	" 8 " "	602.50			$24 12		
	.....	" "	" 8 " "	164.25			6 56	30,68	
	236	Hoyt, Sprague & Co.,	" 8 " "	3,000.00			120 00		
	.....	" " "	" 10 " "	3,500.00			175 00		
	.....	" " "	" 12 " "	3,984.10			239 04	534 04	
	163	A. Tucker, jr., and est. late J. C. Dodge,	" 8 " "	376.43				15 06	
	162	Tucker, Newton & Mills,	" 8 " "	796.34				31 85	
	235	Tucker, Newton & Co.,	" 10 " "	1,350.00			67 49		
	.....	" " "	" 12 " "	1,371.53			82 24	149 73	
	120	Globe Printing Co.,	" 8 " "	367.27				14 68	
	79	Josiah Chapin,	" 8 " "	866.15				34 64	
231	78	FRIDAY, OCTOBER 11, 1861. Page 365.							
	.....	Interest. To George W. Chapin							$1,334 20
778	.....	For interest on balance of his account for commissions:							
		For 8 months interest on $8,604					$344 20		
		For 10 months interest on $9,000					$450 00		
	239	" 12 " " 9,000					540 00	$1 334 20	
179		Sundries. To bills payable:							
	.....	For amount our notes given to the following parties in settlement in part of their charges for commissions:							
54		Hoyt, Tillinghast & Co.,	For our note	June 30, 1861, 8 mos.			626 62		
236	.....	" " "	" "	30, " 8 "			170 81	797 43	
	.....	Hoyt & Tillinghast,	" "	30, " 8 "				451 42	
		Hoyt Sprague & Co.,	" "	30, " 8 "			3,120 00		
		" " "	" "	30, " 10 "			3,67500		
		" " "	" "	30, " 12 "			4,223 14	11,018 14	
163	.....	A. Tucker, jr., & est. late J. C. Dodge,	" "	30, " 8 "				391 49	
162	.....	Tucker, Newton, & Mills,	" "	30, " 8 "				828 19	
235	.....	Tucker, Newton & Co.,	" "	30, " 10 "			699 84		
		" " "	" "	30, " 10 "			717 65		
		" " "	" "	30, " 12 "			1,453 82	2,871 31	

EXHIBIT A—Continued.

120	.....	Globe Printing Co.,	"	"	30,	"	8	"	.....	.....	381 95	.....
79	.....	Josiah Chapin,	"	"	30,	"	8	"	.....	.....	900 79	.....
78	.....	George W. Chapin,	"	"	30,	"	8	"	.....	2,708 84	.....	.....
		" " "	"	"	30,	"	8	"	.....	2,080 00	.....	.....
		" " "	"	"	30,	"	8	"	.....	1,560 00	.....	.....
		" " "	"	"	30,	"	8	"	.....	2,600 00	.....	.....
		" " "	"	"	30,	"	10	"	.....	1,575 00	.....	.....
779	.....	George W. Chapin,	For our note	June	30,	1861,	10	mos	.....	$1,575 00	.....	.....
		" " "	"	"	30,	"	10	"	.....	2,100 00	.....	.....
		" " "	"	"	30,	"	10	"	.....	1,575 00	.....	.....
		" " "	"	"	30,	"	10	"	.....	1,575 00	.....	.....
		" " "	"	"	30,	"	10	"	.....	1,050 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	1,590 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	1,590 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	1,590 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	1,590 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	1,060 00	.....	.....
		" " "	"	"	30,	"	12	"	.....	2,120 00	$27,938 84	.....
947	231	Commission account. To interest							.....	.....	.....	$46,675 76
		For this amt. charges to int. this date, transferred to commission account							.....	$44,513 52	.....	.....
		" " " " " " " "							.....	828 04	.....	.....
		" " " " " " " "							.....	1,334 20	46,675 76	.....

FRIDAY, OCTOBER 11, 1861. Page 366.

102	207	Atlantic De Laine Co., stock-account. To profit and loss:							.....	.....	.....	1,750 00
		For amount balance of Atlantic De Laine Co., stock account transferred to profit and loss							.....	.....	1,750 00	.....

780 SEPTEMBER 2, 1873.

Testimony of Robert E. Northam.

ROBERT E. NORTHAM, sworn and examined by Mr. Payne.

Q. Are you clerk for the Atlantic De Laine Company?

A. I am.

Q. Have you examined the books with a view to see what the aggregate gains of the company are down to the present time since the first report of the master?

A. I have, sir.

Q. Assuming the first report of the master to be correct, and adding to that the gains since, what is the aggregate amount of gains from the beginning?

A. This is to December 31, 1872. The aggregate gains are $1,498,248.47.

Q. What are the aggregate losses to the same date?

A. $1,007,623.43.

Q. These answers assume that the statement of gains and losses in the first report of the master are correct?

A. Yes, sir.

Q. Have you examined the books to see what is the total amount of the construction account to the 31st of December, 1872?

A. I have, sir.

Q. What is it?

A. $2,300,001.62.

Q. What was it in 1871?

A. $2,129,914.23.

Q. What was it in 1870?

A. $2,093,994.79.

Q. What was it in 1869?

A. $2,054,524.07.

Q. What was it in 1868?

A. $1,805,584.14.

Q. What was it in 1867?

781 A. $1,774,522.55.

Q. What was it in 1866?

A. $1,704,113.17.

Q. What was it in 1865?

A. $1,388,570.22.

Q. What was it in 1864?

A. $1,084,264.73.

Q. What was it in 1863?

A. $492,581.50.

Q. What was it in 1862?

A. $300,000.00.

[V V.]

Respondents' claims before the master.

In the first place, we claim that it was error in the court not to pass on the several exceptions of the parties, and we do not waive the right to insist upon that error; but protesting that it is an error, we propose to make our claims under the order as it now stands.

And, first, as to the commissions, we say that the evidence in the case shows—and I refer to the evidence of Mr. Patten, Mr. Butts, and

the officers of the company—that the evidence in the case shows that those commissions were a legitimate part of the business of the company, and that the master ought to reverse his former position, and, instead of disallowing them, to allow them.

But we further say that if he still adheres to his original ruling that they are not legitimate expenses of the business, that ruling legally amounts to a ruling that they were unlawfully paid, and, if so, the proper mode of correcting the wrong is to restore what was then paid out to the company, that the stock should be returned and the money returned, and Mrs. James be entitled to her proportion of the stock and her proportion of the money.

782 Under this order, we claim that the master should in his report distinguish between the debt secured by the mortgage and the other debts found due by Gen. James or his estate to the Atlantic De Laine Company. I will read the order:

"All sums due to the mortgagee will first be charged to the mortgaged estate as ascertained from the agreements and actual dealings of the parties, whether advanced to the actual mortgagor or his assignee."

I suppose the proper interpretation of that language is, that in making up the total amount due, not only what is secured by the mortgage, but what was due outside of the mortgage, whether by Gen. James himself or on account of advances to his assignee, should be included in the amount to be ascertained by the master. But we claim that the master should, and we formally request him to, distinguish in his report, with a view to ulterior action in the case, between what was due and secured by the mortgage and what was due outside of the mortgage, stating in each amount the date of the settlement, and computing interest on each amount separately.

The order then proceeds to say:

"The master shall then proceed to take an account of the net earnings of the mortgaged property."

We claim that under that order it is the duty of the master, and we respectfully request him, to ascertain and report, upon the evidence before him, what was the mortgaged property at the date of the settlement—that is to say, what it consisted of in general terms, as stock, for instance, of a manufacturing company; second, what were the assets and what were the liabilities of the company which the stock represented at the date of the settlement upon the evidence before him, as a starting-point; and that his report ought to distinguish between earnings upon that property as it then existed, and earnings upon property outside of that property, whether accumulated from earnings on that property or from other sources—as the incurring of a debt for the purpose of investment.

783 We claim that the mortgaged property at the time of the settlement consisted of stock in the company, which had certain property and which was under certain liabilities. We claim that the earnings of that property, so situated, should be distinguished in the master's report from the earnings of other property afterwards acquired, whether from investments of the earnings of that property or from other sources, as, for instance, the incurring of a debt for the purpose of adding to the property.

I ought, perhaps, to state here for the master's benefit that these claims are made on consultation with my associate counsel, and that either now or upon the presentation of his draft report, if the rulings should be against us, we may desire to submit some reasons in support of the claims.

As to this latter claim, I will say that we consider the proper way would be to take in any one year the amount of property which was represented in that year, and to inquire how much of it was original and how much of it was represented by profits theretofore made, and then to take the proportion of the whole gains of that year which would be due to the original investment, and to give the complainant her share of that proportional part.

784 *Complainant's exceptions to the master's report.—Filed October 20, 1873.*

The complainant excepts to the report of the master in the above-entitled cause, and sets forth the grounds of her exceptions as follows:

First. In that the said master hath not reported that $\frac{113}{237}$ of the amount paid as salary to the treasurer of said defendant corporation, and to George W. Chapin, who has been, since the office was created, the president and general agent, should be added to the net earnings, with interest thereon to be computed in the same manner as interest is directed to be computed by the order of the court on net earnings.

Second. In that the said master hath credited the defendants with, and hath admitted into his accounts as one of the items with which the estate of Charles T. James should be charged, the sum of $45,155.04, being $\frac{113}{237}$ (with interest thereon) of $47,250.00 paid by certain stockholders to said corporation as assessments upon the shares of said corporation held by said certain stockholders, October 5th, 1855, when the assessment, by virtue of which said sum was paid, was illegal and void, and had been so declared by the supreme court of the State of Rhode Island.

Third. In that the said master hath included in his statement of account, as between the complainant and the Atlantic De Laine Company, and hath charged against the complainant and credited the defendants with the amount of said company's claim against Frieze, assignee, on the contract-account; whereas the same is not a claim against the complainant in her capacity as administratrix of her husband and intestate, the mortgagor, seeking to redeem the mortgaged estate, but is a claim secured under the instrument of assignment and against the estate of the assignor in the hands of his assignee.

785 Fourth. In that the said master hath included in his statement of account, as between the complainant and the Atlantic De Laine Company, and hath charged against the complainant, and hath credited the defendants with, the amount paid William Mason & Co. in settlement of bond; whereas the same is not a claim against the complainant in her capacity as administratrix of her husband and intestate, the mortgagor, seeking to redeem the mortgage estate, but is a claim secured under the instrument of assignment and against the estate of the assignor in the hands of his assignee.

Fifth. In that the said master hath incorporated into, and made a part of his final report, the statement made and sworn to before him by the treasurer of said defendant corporation, in the course of the proceedings had before him prior to the coming in of his first report in this cause, of the condition of the defendant company, March 1st, 1853, notwithstanding the fact that the court by the opinion last delivered, (and in accordance with the instructions contained, in which said opinion the said master was directed to state the accounts between the parties,) have and had declared that the statement of January 1st, 1853, which was and is substantially the same as that so as aforesaid incorporated into the

final report of the said master, "was erroneous in large amounts;" and "not only was false, but was furnished with the intent to deceive and defraud."

And the said complainant submits that said statement, notwithstanding the language of the court, the said master hath seen fit to incorporate into his final report, should be wholly stricken from the same, and she now excepts to the inclusion and incorporation thereof into the final report of the master, as she has heretofore objected to the inclusion and incorporation of the same into the draft report of the master.

By her solicitor,

JAMES H. PARSONS.

786 *Respondents' exceptions to the master's report.—Filed October* 24, 1873.

The respondents except to the report of the master heretofore filed in the above-entitled cause, and set forth the following as the grounds of exceptions thereto:

These respondents claim that it was error in the court not to pass specifically upon the exceptions heretofore filed by the parties, respectively, to the original and supplemental reports, and either to sustain or overrule the same, and not waiving, but insisting on their right to be heard upon such exceptions, and to have the decision of the court upon the same, and upon each and every of the same, they except to this report of the master—

First. Because the master hath refused to allow the sum of two hundred thirty-one thousand three hundred seventy-one and sixty-five hundredths dollars ($231,371\frac{65}{100}$) in cash and stock distributed to other stockholders as commissions for endorsing the paper of the company, as a part of the legitimate expenses of the company.

Second. Because, if the master holds that such distribution of cash and stock is not part of the legitimate business of the company, it is substantially a ruling by him that such distribution was an unlawful act, and the proper mode of repairing the wrong is to restore what was thus distributed to the company, to the end that the stock may be cancelled and the complainant may have her proportion of the cash only; and the master ought to have so reported.

In support of these exceptions, the respondents refer to the evidence before the master, and specifically cited in the exceptions to his ruling upon this subject in his supplemental report heretofore made.

787 Third. Because the master hath not in his report distinguished between the earnings on mortgaged property as it existed at the date of the settlement, and earnings upon other property, whether acquired from invested earnings on the mortgaged property or from other sources, and in support refer to the testimony of R. E. Northam.

ATLANTIC DE LAINE CO ET ALS.,
By A. PAYNE, *Solicitor.*

And at the November term, 1873, to wit, Feb'y 18th, 1874, said cause came on to be heard, upon the exceptions to the master's report, before Justice Clifford and Judge Knowles; and upon the 19 day of February the conclusions of the court thereon were given as follows by Justice Clifford.

CONCLUSIONS OF COURT.

All the exceptions of the respective parties have been attentively considered by the court and I am constrained to dispose of the same as follows:

788 COMPLAINANT'S EXCEPTIONS.

Five exceptions were filed by the complainant, of which the first four are overruled.

1. Salaries paid to the regular officers of the corporation are a proper charge under the head of running expenses. It is said that the salaries were improperly raised, but in the absence of proof to show fraud or any want of good faith, the court must presume that the vote advising the raising the salaries was passed in the usual course of official duty.

2. Assessment paid by the other stockholders having been made for the benefit of the whole of the stockholders, the proportion charged to the estate represented by the complainant is a proper one; else she would not be entitled to any share of what was paid by others.

789 3. All sums due to the mortgagee are to be charged to the estate, whether advanced to the mortgagor or his assignee.

4. Fourth exception of complainant is overruled for the same reason.

5. Complainant's fifth exception is sustained, and the statements therein referred to is ordered to be stricken from the master's report as immaterial and not correct in point of fact.

RESPONDENTS' EXCEPTIONS.

1st. Respondents' first exception is sustained. By the master's report it appears that "the complainant further claims to be credited as part of the net earnings her fractional part of the amount paid certain stockholders as commissions Oct. 11, 1861, for endorsing for the company, that amount being $231,371.65, which was paid in shares of the company, 186 shares at par, $1,000 each, and notes of the company, $45,571.65."

790 Responsive to that claim, the master states that he "is satisfied from the evidence before him & finds that the condition of the company at the date of the instruments of release and settlement was such that it was compelled to resort to the credit of the stockholders; that it was necessary in order to enable the company to procure the requisite funds to carry on their business to obtain endorsers for their paper offered for discount; that the usage of the banks in the city of Providence required endorsers. That the business of the company required means in excess of what might be obtained by the usual advances on goods. That it was understood & agreed between the stockholders that they should, from time to time, as needed and required, endorse & accept for the company, for which they were to be compensated whenever the company should be in a position so to do. That, in pursuance of this understanding & agreement, the endorsements and acceptances were so made, and the above payment

791 made to them as such compensation as aforesaid." We are convinced that the evidence supports the finding of the master as above given, but we are not satisfied that the reasons given by the master for overruling the claim of the respondents are sufficient to support his conclusions.

2. Second exception overruled as immaterial, inasmuch as their first exception is sustained.

3. Third exception overruled, as there is no evidence to support the theory that profits have been computed on any property except the mortgaged property and property produced from the earnings of the mortgaged property.

RECAPITULATION.

First four of the complainant's exceptions are overruled.
Fifth exception of complainant is sustained.
First exception of respondents is sustained.
Second and third exceptions of respondents are overruled.

792 Amount allowed to complainant by the master is $852,257 41
Deduct, under the 1st exception of respondents.. 187,924 06

Balance..... $664,333 35

Report of the master, as amended, confirmed, with interest from July 1st, 1873, to date.

Interest to date computed at..... $25,385 39

Total..... 689,688 78

Decree for the complainants for the $\frac{113}{237}$ shares, as prayed for in the bill of complaint. Also for the profits and interest, amounting to $689,688.78, and for costs of such errors, if any, in computing interest from July 1st, 1873, to be corrected.

Whereupon the following decree was entered:

793 Circuit court of the United States, Rhode Island district.

LUCINDA JAMES, ADMX.,
vs.
ATLANTIC DE LAINE CO.

Final decree.

This cause came on to be heard after the order referring said cause for further testimony, and upon the exceptions to the report of the master, made upon the recommittal of said cause to him after said rehearing. And after hearing, and upon consideration thereof, it is ordered, adjudged, and decreed as follows:

First. That the first, second, and fourth exceptions filed by the complainant to said master's report be, and the same are hereby, overruled.

Second. That the fifth exception filed by said complainant be, and is hereby, sustained.

Third. That the second and third exceptions filed by the defendants to said master's report be, and the same are hereby, overruled.

Fourth. That the first exception filed by said defendants to said master's report be, and the same is hereby, sustained.

And it is further ordered, adjudged, and decreed that the indenture of settlement, dated March 2d, 1853, executed by the Atlantic De Laine Company, and by Lyman B. Frieze, assignee of Charles T. James,

794 which is set forth in the pleadings and annexed to the bill of complaint herein, marked "D," and the instrument of release dated March 2, 1853, executed by Lyman B. Frieze, assignee, to the Atlantic De Laine Company, set forth in the pleadings, and annexed to the bill of complaint herein, marked "C," and the instruments referred to in said instruments, being the instrument executed by Lyman B. Frieze, assignee, conveying to the Atlantic De Laine Company all the right, title, and interest of Charles T. James in and to the capital stock of

said corporation, and in and to all the real and personal estate thereof, said instrument appearing in the record in this suit, and annexed to the deposition of George W. Chapin, and marked "Exhibit N;" and also the instrument dated March 9, 1853, whereby said Frieze, assignee of said James, transferred to said corporation and to George W. Chapin, trustee, one hundred and thirteen shares of the capital stock of said corporation, which said instrument is annexed to the deposition of George W. Chapin, and marked "Exhibit L," are hereby set aside as having been obtained by fraudulent representations and concealments.

And it is further ordered, adjudged, and decreed that the complainant, administrat'ix of Charles T. James, deceased, is entitled to the one hundred and thirteen two hundred and thirty-sevenths of the capital stock and property of said defendant corporation, as by the former decretal order of this court she was declared to be entitled, and to which her late husband and intestate was entitled on the 2d day of March, A. D. 1853, and which ceased to stand in his name after said date; and that in case title thereto and satisfactory evidence thereof shall not be delivered to her as administratrix within fifty days, then the said complainant, in her capacity as administratrix, is hereby entitled to recover the sum of one dollar as the value of said stock and property, or any part thereof.

And it is further ordered, adjudged, and decreed that said George W. Chapin, trustee of Hill, Carpenter & Co., the Globe Printing Company, Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., do transfer and convey to said complainant, administratrix of Charles T. James, all his right, title, and interest in and to the
795 property conveyed to him by the deed of mortgage executed to said Chapin, as trustee by Charles T. James, on the 1st day of August, A. D. 1851, and which is duly recorded in the town clerk's office of North Providence, and which is referred to in the pleadings in this case, and appears among the proofs taken under the order for rehearing heretofore made in the cause, and is marked "Exhibit G."

And it is further ordered, adjudged, and decreed that the said corporation, the said Atlantic De Laine Company, and said defendant, George W. Chapin, do pay to the said complainant, administratrix as aforesaid, the sum of six hundred and eighty-nine thousand six hundred and eighty-eight $\frac{78}{100}$ dollars ($689,688.78) and the costs of this suit, to be taxed by the clerk of this court.

And it is further ordered, adjudged, and decreed that the said defendant Lyman B. Frieze be required and directed to convey to said complainant, administratrix of Charles T. James, deceased, all the interest in the property conveyed in and by the aforesaid deed of mortgage from said James to said Chapin, which was conveyed to him, the said Freize, under and by virtue of the deed of assignment in the pleadings mentioned and set forth, and which bears date the 2d day of September, A. D. 1851, upon security being given to said Frieze to an amount not exceeding the amount which may be recovered under this decree to the satisfaction of the district judge, against the claims of William Higgins & Sons, and the assignees of Hill, Carpenter & Co., proved in the case, and all other just claims against the said James, secured by said assignment, if any there be, which are now valid claims against the estate of said James, said instruments of conveyance hereinbefore directed to be executed, to be first approved by the district judge, and to be executed and delivered within sixty days.

And it is further ordered, the parties assenting thereto, that Hon. John P. Knowles, district judge, be appointed sole referee for the pur-

pose of ascertaining the existence and amount of any claims against the said Charles T. James, secured by the assignment of said James to the said Frieze in the pleadings set forth other than the claims of Wm.
796 Higgins & Sons, and of the assignees of Hill, Carpenter & Co., which are proved in said cause, said claims to be presented to the district judge within fifteen days after the date of this decree, and to be summarily adjudicated upon by him within thirty-five days thereafter.

And it is further ordered and decreed that in case the said sum of $689,688.78 and the costs of this suit, as taxed by the clerk, be not paid within sixty days from the date of this decree, execution shall forthwith issue in favor of the complainant for the full amount thereof.

Entered as the decree of this court, per order thereof, this thirty-first day of November term, 1873, to wit, Feb. 19, 1874.

HENRY PITMAN,
Clerk Circuit Court.

From which decree the respondents on the same day gave notice, in open court, of their intention to appeal to the United States Supreme Court. Appeal to be allowed when bond is filed.

Bonds to be filed and appeal taken within sixty days.

797 *Deed.—Geo. W. Chapin, trustee, to Lucinda James, admx.—Filed April* 18, 1874.

Whereas under & by the terms of a decree duly entered by the order of the circuit court of the United States for the district of Rhode Island, in the suit Lucinda James, admx. of the estate of Chas. T. James, deceased, vs. Atlantic De Laine Company, George W. Chapin, & Lyman B. Freize, it was, among other things, ordered, adjudged, & decreed that said George W. Chapin, trustee of Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lea & Co., and Dodge, Tucker & Co., do transfer and convey to said Lucinda James, admx. as aforesaid, all his right, title, & interest in and to the property conveyed to him by the deed of mortgage executed to him, as trustee, by Charles T. James, on the 1st day of August, A. D. 1851, referred to in the pleadings
798 and appearing among the proofs taken under the order for rehearing made in said cause, and marked "Exhibit G."

Now, know all men by these presents, that I, George W. Chapin, trustee of Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lea & Co., & Dodge, Tucker & Co., in consideration of the premises and of one dollar to me paid, do hereby transfer and convey to said Lucinda James, in her capacity as administratrix of Charles T. James, deceased, all my right, title, and interest as trustee as aforesaid in and to the property conveyed to me by Charles T. James by deed of mortgage executed by said Charles T. James to me as trustee as aforesaid on the 1st day of August, A. D. 1851, which was lodged for record in the town clerk's office of the town of North Providence, August 5, A. D. 1851, at 2½ ocl'k p. m., and is duly recorded in said town clerk's office, reference thereto being had. To have and to hold the said
799 property to her, the said Lucinda James, in her capacity as admx. as aforesaid, and to her successors in said office & trust, her and their heirs and assigns forever.

In witness whereof I have hereunto set my hand & seal, as trustee as aforesaid, this 18th day of April, A. D. 1874.

GEORGE W. CHAPIN, *Trustee.* [SEAL.]

In presence of—
JAMES H. PARSONS

STATE OF RHODE ISLAND, *Providence, ss:*

In Providence, this 18th day of April, personally appeared George W. Chapin, trustee, and in his said capacity acknowledged the foregoing instrument to be his free & voluntary act and deed.

Before me.

JAMES H. PARSONS,
Justice of the Peace.

I approve of the form of the foregoing deed.

JOHN P. KNOWLES,
U. S. District Judge.

800 *Deed.—Lyman B. Frieze, assignee, to Lucinda James, admx.—Filed April 18th, 1874.*

Whereas, under & by virtue of a deed duly entered by the order of the circuit court of the United States for the district of Rhode Island, in the suit Lucinda James, administratrix of Charles T. James, deceased, v. The Atlantic De Laine Company and George W. Chapin & Lyman B. Frieze, it was, among other things, ordered, adjudged, & decreed that said Lyman B. Frieze, assignee of Chas. T. James, do convey & transfer unto Lucinda James, admx. of Chas. T. James, all the right, title, & interest held by him, the said Frieze, in and to the property conveyed to George W. Chapin, as trustee of Hill, Carpenter & Co.; the Globe Printing Co., of Providence; Hoyt & Tillinghast, of New York City; Hacker, Lea & Co., of Philadelphia; and Dodge, Tucker & Co., of Boston, by deed of mortgage from Chas. T. James, bearing date the
801 1st day of August, A. D. 1851, and duly recorded in the town clerk's office of North Providence, which was transferred to said Lyman B. Frieze by deed of assignment, duly executed to him, the said Frieze, and which bears date the 2d day of September, A. D. 1851, and is duly recorded among the records of said North Providence, of the city of Providence, & elsewhere, upon security being given to him, the said Frieze, to an amount not exceeding the amount which may be recovered under said decree against the claims of William Higgins & Sons and of the assignees of Hill, Carpenter & Co., which were proved in said suit, and against all just claims other than those so proved, if any there be, which are now valid claims against the estate of said James, said security to be to the satisfaction of one of the judges of said court; and whereas the said security has been given to said Frieze to the satisfaction of Hon. John P. Knowles, United States district judge for the district of Rhode Island:

802 Now, therefore, know all men by these presents that I, Lyman B. Frieze, assignee of Charles T. James, in consideration of the premises, do hereby transfer, set over, and convey unto Lucinda James, in her capacity of administratrix of Charles T. James, deceased, all the right, title, and interest in & to the property conveyed to George W. Chapin, trustee of Hill, Carpenter & Co., the Globe Printing Co., Hoyt & Tillinghast, Hacker, Lee & Co., and Dodge, Tucker & Co., by Charles T. James by his deed of mortgage dated the 1st day of August, A. D. 1851, which was transferred & conveyed, or which passed to me under & by virtue of the deed of assignment executed by the said Chas. T. James, deceased, to me, and which bears date the second day of September, A. D. 1851: To have and to hold the same property to her, the said Lucinda James, in her capacity of administratrix of said Charles T. James, as

aforesaid, and to her successor or successors in said office and trust and their assigns forever.

803 In witness whereof I have hereunto set my hand and seal this 7th day of April, A. D. 1874.

LYMAN B. FREIZE, [SEAL.]
Assignee of Chas. T. James.

In presence of (the words "assignee of Chas. T. James" interlined on page 1, & also on page 2, before signing)—
HENRY MARSH, JR.

STATE OF RHODE ISLAND,
County of Providence, ss:

In Providence, this 7th day of April, A. D. 1874, before me personally appeared Lyman B. Frieze, assignee of Charles T. James, and acknowledged the foregoing instrument, by him signed in his said capacity, to be his free & voluntary act & deed in his said capacity.

HENRY MARSH, JR.,
Notary Public.

I approve the form of the foregoing deed.

JOHN P. KNOWLES,
R. I. District Judge.

804 *Security to L. B. Frieze, assignee.—Filed April 20th*, 1874.

Whereas, in and by the terms of a decree duly entered in the circuit court of the United States for the district of Rhode Island, on the thirty-first day of the November term thereof, A. D. 1873, to wit, February 19, 1874, in the suit Lucinda James, administratrix of Charles T. James, deceased, vs. Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, it was, among other things, ordered, adjudged, and decreed that said defendant, Lyman B. Frieze, be required and directed to convey to said complainant, administratrix of Charles T. James, deceased, all the interest in the property conveyed in a certain deed of mortgage, dated August 1, 1851, from said Charles T. James to George W. Chapin, which was conveyed to him, the said Frieze, under and by virtue of the deed of assignment made by James to Frieze, set forth in the pleadings in said suit, and dated September 2d, A. D. 1851, upon security being given to said Frieze to an amount not exceeding the amount which might be recovered under said decree to the satisfaction of the district judge, against the claims of William Higgins & Sons, and the assignees of Hill, Carpenter & Co., proved in the case, and all other just claims against said James, secured by the assignment, if any there should be, which are now valid claims against the estate of said James; and by said decree it was further provided, the parties assenting thereto, that Hon. John P. Knowles, district judge, be appointed sole referee, for the purpose of ascertaining the existence and amount of any claims against the estate of said James, secured by said assignment, other than the said claims of Higgins & Sons, and the assignees of Hill, Carpenter & Co., said claims to be presented to said district judge within fifteen days from the date of said decree, and to be summarily adjudicated upon by him within thirty-five days thereafter; and whereas said district judge has adjudicated upon all claims so presented, and has ascertained and adjudicated that there are none which are now valid and legal claims against the said estate of said James:

Now, therefore, I, Lucinda James, administratrix of Charles T. James, in consideration of the premises and of other valuable considerations, do covenant, stipulate, and agree to and with the said Lyman B. Frieze, and with the said William Higgins & Sons, and with the assignees of Hill, Carpenter & Co., their heirs, executors, and administrators, that I will pay the said claims of William Higgins & Sons, and of the assignees of Hill, Carpenter & Co., out of the first available assets which may come into my hands from, on account of, or under said decree, and that I will indemnify and save harmless the said Frieze, his heirs, executors, and administrators, from any and all claims or demands for or on account of the same, or either of them, and will be responsible and liable therefor in the place and stead of him, the said Frieze, to the full amount which may be recovered by me under the said decree, and that I will, in my said capacity, satisfy the claims of said William Higgins & Sons and the assignees of Hill, Carpenter & Co., in the manner and to the extent set forth in said decree. And to the full performance of this covenant, stipulation, and agreement I do bind myself and my successors in said trust.

In witness whereof I have hereunto set my hand and seal this eighteenth day of April, A. D. 1874.

LUCINDA JAMES, *Admx.* [SEAL.]

In presence of—
JAMES H. PARSONS.

And we, James Higgins, John Higgins, and Henry Higgins, copartners, composing the firm of William Higgins & Sons, by William Goddard, our attorney, do hereby accept the foregoing substitution of Lucinda James, administratrix, for and in the stead of Lyman B. Frieze, individually, and as assignee of Charles T. James, and the security, so as aforesaid given, and in consideration of the premises, do release and discharge said Frieze, his heirs, executors, and administrators, and the estate of said James assigned to said Frieze, from any and all claims or demands for or on account of the claims held by us and proved in the above-named suit, and hereby substitute therefor the liability of the estate of said James, which may be recovered by the administratrix in the manner and to the extent set forth in the said decree.

In witness whereof the said James Higgins, John Higgins, and Henry Higgins, co-partners aforesaid, by William Goddard, attorney as aforesaid, have here set their hands and seals this eighteenth day of April, A. D. 1874.

JAMES HIGGINS, [SEAL.]
JOHN HIGGINS, [SEAL.]
HENRY HIGGINS, [SEAL.]
By WM. GODDARD,
Their Attorney in Fact.

In presence of—
N. S. PRIOR.

I approve the form of the within instrument.

JOHN P. KNOWLES,
U. S. District Judge.

805 *Security to L B. Frieze.—Filed Ap'l 20th*, 1874.

Whereas in and by the terms of a decree duly entered in the circuit court of the United States for the district of Rhode Island on the thirty-

first day of the November term thereof, A. D. 1873, to wit, February 19, 1874, in the suit Lucinda James, administratrix of Charles T. James, deceased, vs. Atlantic De Laine Company, George W. Chapin, and Lyman B. Frieze, it was, among other things, ordered, adjudged, and decreed that said defendant, Lyman B. Frieze, be required and directed to convey to said complainant, administratrix of Charles T. James, deceased, all the interest in the property conveyed in a certain deed of mortgage dated August 1, 1851, from said Charles T. James to George W. Chapin, which was conveyed to him, the said Frieze, under and by virtue of the deed of assignment made by James to Frieze, set forth in the pleadings in said suit and dated September 2d, A. D. 1851, upon security being given to said Frieze to an amount not exceeding the amount which might be recovered under said decree, to the satisfaction of the district judge, against the claims of William Higgins & Sons, and the assignees of Hill, Carpenter & Co., proved in the case, and all other just claims against said James, secured by the assignment, if any there should be, which are now valid claims against the estate of James; and by said decree it was further provided, the parties assenting thereto, that Hon. John P. Knowles, district judge, be appointed sole referee for the purpose of ascertaining the existence and amount of any claims against the estate of said James, secured by said assignment, other than the said claims of Higgins & Sons and the assignees of Hill, Carpenter & Co., said claims to be presented to said district judge within fifteen days from the date of said decree, and to be summarily adjudicated upon by him within thirty five days thereafter; and whereas said district judge has adjudicated upon all claims so presented, and has ascertained and adjudicated that there are none which are now valid and legal claims against the estate of said James:

Now, therefore, I, Lucinda James, administratrix of Charles T. James, in consideration of the premises and of other valuable considerations, do covenant, stipulate, and agree to and with the said Lyman B. Frieze, and with the said William Higgins & Sons, and with the assignees of Hill, Carpenter & Co. their heirs, executors, and administrators, that I will pay the said claims of William Higgins & Sons and of the assignees of Hill, Carpenter & Co., out of the first available assets which may come into my hands from, on account of, or under, said decree, and that I will indemnify and save harmless the said Frieze, his heirs, executors, and administrators, from any and all claims or demands for or on account of the same, or either of them, and will be responsible and liable therefor in the place and stead of him, the said Frieze, to the full amount which may be recovered by me under the said decree, and that I will, in my said capacity, satisfy the claims of said William Higgins & Sons and the assignees of Hill, Carpenter & Co. in the manner and to the extent set forth in said decree. And to the full performance of this covenant, stipulation, and agreement I do bind myself and my successors in said trust.

In witness whereof I have hereunto set my hand and seal this eighteenth day of April, A. D. 1874.

LUCINDA JAMES, *Admx.* [L. S.]

In presence of—
JAMES H. PARSONS.

And we, Thomas Jenckes and Earl P. Mason, surviving assignees of the late firm of Hill, Carpenter & Co., do hereby accept the foregoing substitution of Lucinda James, administratrix, for and in the place and stead of Lyman B. Frieze, individually, and as assignee of Charles T.

James, and the security, so as aforesaid given, and in consideration of the premises, do release and discharge said Frieze, his heirs, executors, and administrators, and the estate of said James assigned to said Frieze, from any and all claims or demands for or on account of the claims held by us and proved in the above-named suit, and hereby substitute therefor the liability of the estate of said James, which may be recovered by the administratrix in the manner and to the extent set forth in the said decree.

In witness whereof the said Thomas A. Jenckes and Earl P. Mason, surviving assignees as aforesaid, have here set their hands and seals this eighteenth day of April, A. D. 1874.

EARL P. MASON, [L. S.]
T. A. JENCKES, [L. S.]
Surviving Assignees of Hill, Carpenter & Co.

In presence of—
JAMES H. PARSONS.

I approve the form of the within instrument.
JOHN P. KNOWLES,
U. S. District Judge.

806 *Referee's report.—Filed April 10th*, 1874.

My duty as "sole referee" under the decree of which a copy is prefixed, is to "ascertain the existence & amount of any claims against Charles T. James, secured by his assignment to Lyman B. Freize, which are now valid claims against the estate of said James, other than two claims specified, the claimants to present their claims within fifteen days from the 19th February," and I to summarily adjudicate upon them within fifty days from said 19th February.

Of my proceedings in discharge of this duty, I now respectfully make report as follows:

Within the prescribed period three claims have been presented,
807 upon which the parties claimants and the claimant administratrix have been fully heard, and upon which I have adjudicated as follows:

Claim No. 1 is that of Lucius Skinner, upon two notes of $5,000 each, upon which it appears Charles T. James became liable as endorser in Augt., 1851, of which claim I deem it sufficient here to say that, as it was presented to the commissioners on insolvency of claims against the estate of C. T. James, in 1868, and was by them disallowed because found by them barred by the statute of limitations, it cannot now be regarded as "a valid claim against the estate of said James."

Claim No. 2 is that of Lyman B. Freize for compensation for services as assignee of C. T. James, under the deed of September 2d, 1851.
808 This claim is resisted upon several grounds, upon only one of which, however, does it seem necessary or expedient that I here express an opinion.

It is contended in opposition to this claim that, in view partly of the limited provision for the assignee's compensation in the deed of assignment showing a contract between the assignor & the assignee; secondly, of the assignee's statements in his answer as a party to this suit, and of his replies to interrogatories addressed to him, as a deponent, bearing upon the matter of his compensation; thirdly, of the judgment of the court upon the claimant's transactions as assignee; and fourthly, of the fact that in the final decree of the court no reference or allusion is

made to this claimant as a creditor of the estate or a claimant upon the monies adjudged due to the administratrix—in view of these
809 facts, I repeat, it is contended by the administratrix that this claim must by me be adjudged not a just or valid claim within the purview of the decree of Feb'y 19th.

And in this view I am constrained to concur, and here adjudge accordingly.

Claim No. 3 (and the last) is that of James G. Wilson, for the sum of about $20,000 by him advanced in the year 1852, at the request of Charles T. James, to George B. Holmes, to be by Holmes applied to the purchase of claims preferred in the second clause of James' assignment.

The claims purchased are simple account claims to the number of twenty-six, and produced by the claimant, each endorsed with a brief assignment of it to and a certificate of the assignee to the effect
810 that the claim is one included in the second clause, the claimant & Mr. Holmes each testifying that for one of the claims fifty per cent. of its face was paid, and for the remaining twenty-five forty per cent. only.

To this claim, or these twenty-six claims, the administrix makes answer (to state but one point of the several raised & discussed) that a prosecution of them in 1874 as valid or just claims, either at law or in equity, is conclusively barred by the lapse of time, a conclusion of fact & law in which I am constrained to concur.

I therefore report, as the result of my inquiries, deliberations, & findings, that no claim now valid against the estate of said James has been to me presented within the period named, nor, it may not be amiss to add, since the expiration of said period.

All which is respectfully submitted.

JOHN P. KNOWLES, *Referee.*

811 *Appeal-bond.—Filed March* 25, 1874.

Know all men by these presents, that the Atlantic De Laine Co., a corporation duly incorporated by the general assembly of the State of Rhode Island, & located in the city of Providence, in the State of Rhode Island, as principal, and William H. Hopkins and Abraham Payne, both of Providence, R. I., as sureties, are held & firmly bound unto Lucinda James, administratrix on the estate of Charles T. James, deceased, in the full sum of one thousand dollars, to which payment, well & truly to be made, said Atlantic De Laine Co. binds itself, its successors, & legal representatives, jointly & severally, with the sureties above named, who bind themselves, their heirs, executors, & administrators, jointly & severally, with the said Atlantic De Laine Co., its successors,
812 and legal representatives, firmly by these presents, sealed with the seal of said Atlantic De Laine Co., affixed by their treasurer, Thomas A. Doyle, & sealed with the seal of the above-named sureties, this 24th day of March, A. D. 1874.

Whereas at a circuit court of the U. S., holden at Providence, within & for the Rhode Island district, by adjournment, on the 19th of February, A. D. 1874, in a suit in equity depending in said court between Lucinda James, admx., and the Atlantic De Laine Co., a decree was rendered against said Atlantic De Laine Company for the sum of $689,688.78, and said Atlantic Le Laine Co. have appealed in open court from said decree to the Supreme Court of the U. States, to be holden at Washington on the second Monday of October next ensuing the date hereof:

813 Now, the condition of the above obligation is such, that if the

said Atlantic De Laine Co. shall prosecute said appeal with effect, and answer all costs if they fail to make their plea good, then the above obligation to be void; else to be and remain in full force and virtue.

ATLANTIC DE LAINE CO., [L. S.]
By THOS. A. DOYLE, *Treas'r.*
WM. H. HOPKINS. [L. S.]
ABRAHAM PAYNE. [L. S.]

In presence of—
R. C. TAFT, witness to all the signatures.

Approved March 28th, 1874.

JOHN P. KNOWLES,
Judge of U. S. Dist. Court for the Dist. of Rhode Island.

814 *Appeal-bond.—Filed April 3d*, 1874.

Know all men by these presents, that George W. Chapin, of North Providence, in the county of Providence & State of Rhode Island, as principal, and William H. Hopkins and Abraham Payne, both of Providence, in the State of Rhode Island, as sureties, are held & firmly bound unto Lucinda James, administratrix on the estate of Charles T. James, deceased, in the full sum of one thousand dollars, to which payment, well & truly to be made, said George W. Chapin binds himself, his heirs, executors, & administrators, jointly & severally, with the sureties above named, who bind themselves, their heirs, executors, & administrators, jointly and severally, with the said George W. Chapin, firmly by
815 these presents, sealed with the seal of said George W. Chapin and sealed with the seals of the above-named sureties this 3d day of April, A. D. 1974.

Whereas at a circuit court of the U. S., holden at Providence, within & for the district of Rhode Island, by adjournment, on the 19th day of February, A. D. 1874, in a bill in equity depending in said court between Lucinda James, administratrix, & The Atlantic De Laine Company et als., a decree was rendered against said George W. Chapin for the sum of $689,688.78, and for the conveyance by him of certain property; and said George W. Chapin has appealed in open court from said decree to the Supreme Court of the U. S., to be holden at Washington on the second Monday of October next ensuing the date hereof:

Now, the condition of the above obligation is such, that if said
816 George W. Chapin shall prosecute said appeal with effect, and answer all costs if he fails to make his plea good, the above obligation to be void; else to remain in full force and virtue.

GEO. W. CHAPIN. [L. S.]
WM. H. HOPKINS. [L. S.]
ABRAHAM PAYNE. [L. S.]

ARTHUR D. PAYNE, witness to all the signatures.

Approved.

JOHN P. KNOWLES,
Dist. Judge of R. I. Dist.

817 UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE, CIRCUIT COURT,
At Providence, October 2d, 1874.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the foregoing eight hundred and seventeen pages contain a true transcript of the record Lucinda James, admx., v. The Atlantic De Laine Company, and all of the proceedings therein.

In testimony whereof I have hereunto set my hand & the seal of said court on the day & year above written.

[SEAL.] HENRY PITMAN, *Clerk.*

818 United Stated States circuit court, district of Rhode Island.
June term, A. D. 1874.

LUCINDA JAMES, ADMX.,
vs.
ATLANTIC DE LAINE CO. ET AL.

The undersigned, Robert E. Northam, trustee of the defendant corporation in said cause, the Atlantic De Laine Company, after the date when the appeal in said cause was claimed and allowed, herewith presents to this honorable court a certificate of the clerk of the district court, setting forth the proceedings in said court against the said defendant corporation in bankruptcy, and respectfully requests that the same may be entered upon the minutes of proceedings in this honorable court, and that the clerk of this honorable court may be directed to certify that a certificate of said proceedings in the district court has been filed in this court and entered upon the minutes of proceedings herein, together with a copy of said proceedings in the district court, as entered upon the minutes of proceedings in this court, together with a copy of this motion.

ROBERT E. NORTHAM,
By his solicitor, WINGATE HAYES.

A. PAYNE, *of Counsel.*

819 Motion heard and granted in open court.

The following is the certificate of proceedings from the district court referred to in the foregoing motion:

UNITED STATES OF AMERICA,
District of Rhode Island, ss:

CLERK'S OFFICE DISTRICT COURT,
At Providence, Sept. 30, 1874.

I, Henry Pitman, clerk of said court for said district, do hereby certify that on the 12 day of March, A. D. 1874, the National Exchange Bank of Providence, in said district, filed a petition in bankruptcy against the Atlantic De Laine Company, a corporation created by the general assembly of the State of Rhode Island, upon which petition the said company were, on the 30 of March, 1874, adjudged bankrupt, and at the first meeting of the creditors of said company, holden on the 21st of April, 1874, by a resolution passed by three-fourths in value of the creditors of said company, whose claims had been proved, Robert E. Northam, of Providence, was nominated trustee, and James Y. Smith,

Royal C. Taft, and George C. Nightengale, all of said Providence, were appointed the committee of creditors, under whose direction said
820 trustee should act in settling the estate of said Atlantic De Laine Co. And upon the 30th of April, 1874, the conveyance to said trustee was duly executed and filed, and the order to stay further proceedings upon said creditors' petition entered; all which appears from the docket and minute-book in bankruptcy of said district court.

In testimony whereof I have hereunto set the seal of said court and my hand this 30 of September, A. D. 1874.

[L. S.] HENRY PITMAN,
Clk. Dist. Ct.

DISTRICT OF RHODE ISLAND, *ss:*

CLERK'S OFFICE CIRCUIT COURT,
At Providence, October 8th, 1874.

I, Henry Pitman, clerk of said court for said district, do hereby certify that the above and foregoing three pages contains a true copy from the record of proceedings of the circuit court for said district at the June term, 1874, to wit, on the 5 day of October, 1874.

In testimony whereof I have hereunto set the seal of said court and my hand this 8th of October, 1874.

[SEAL.] HENRY PITMAN,
Clk. Cir. Ct.

(Indorsement on cover:) No. 585. The Atlantic De Laine Company et al., appellants, vs. Lucinda James, admx. of Chas. T. James, dec'd. Rhode Island C. C. U. S. Filed 12th October, 1874.

4-207

Supreme Court of the United States.

OCTOBER TERM, A. D. 1876.

ATLANTIC DELAINE CO., EL AL., APPTS.,
vs.
LUCINDA JAMES, ADMINISTRATRIX.

IN EQUITY, No. 120.

RECORD HISTORY OF THE CASE.

Original Bill filed March 1st, 1859. . . page 1.
Demurrers heard June Term, 1859, over ruled November Term, 1859. Answer filed December 6th, 1859. . page 22.
Replication, ... page 27.
Answer of Frieze filed by agreement, . page 110.
Replication. . . . . page 117.
Motions to strike out depositions, filed November Term, 1861, 2d day, and November Term 1861, 5th day, . pages 133-134.
Motions heard November Term, 1861, 5th day. page 134.
Case opened for further testimony until November 1st, 1862, June Term, 1862. . . page 134.
Death of Complainant suggested November 17th, 1862. . . . . page 134.
(Complainant died October, 1862.)
Bill of Revivor, January 6th, 1863. . page 134.
Answer, June 15th, 1863.

Time for taking testimony extended, June Term, 1863, to October 1st, 1863. . . . page 137.
Time for taking testimony extended, June Term, 1864, to October 1st, 1864. . . page 137.
Time for taking testimony extended, November Term, 1864, to April 1st, 1865. . . page 137.
Order to take testimony of Frieze, March 25th, 1865. . . . . page 137.
Leave granted to make proof of exhibits annexed to George W. Chapin's Desposition. . . page 207.
Agreement to use the Depositions of Lea and Hoyt. . . . . page 207.
Case heard November Term, 1866. . . page 212.
Case decided November Term, 1867. . page 212.
Opinion of Clifford J., No. 1. . . page 212.
Case before a Master.
Decree filed November 25th, 1867. . . page 217.
Masters Report No. 1. November Term 1870 page 350.
Petition to reverse Interlocutory Decree, December 30th, 1870. . . . . page 374.
Petition withdrawn and Case heard on Exceptions to the Master's Report, June Term, 1871, (October 3d.) . . . . page 375.
Case recommitted to the Master, June Term, 1872, (June 2d, 1872.) . . . . page 375.
Masters Report No. 2, August 19th, 1872. page 375.
Petition to reverse Interlocutory Decree renewed September 3d, 1872. . . . page 387.
Order thereon September 3d, 1872. . . page 387.
Case heard on Petition for Revisal and Exceptions, June Term 1872, (October 23d, 1872,) . page 475.
Case decided June Term 1873, (June 19th.) page 475.
Opinion of Clifford J., No. 2. . . page 475.
Case recommitted to the Master, June 19th, 1873. page 483.
Master's Report No. 3, September 30th, 1873. page 483.
Case heard on Master's Report No. 3, November Term 1873, (February 18th, 1873.) . page 506.
Final Decree, February 18th, 1873. page 508.

Notice of Appeal in open Court, February 18th, 1873. . . . . page 510.
Atlantic DeLaine Co., Appeal Bond, March 25th, 1874. . . . . page 516.
George W. Chapin, Appeal Bond, March 28th, 1874. . . . . page 517.
Proceedings in Bankruptcy. . . . . page 518.

Supreme Court of the United States,

No. 120.

THE ATLANTIC DE LAINE COMPANY ET ALS.,
Appellants,

vs.

LUCINDA JAMES, ADMINISTRATRIX OF CHARLES T. JAMES, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

Brief for the Plaintiffs in Error.

WINGATE HAYES,
ABRAHAM PAYNE,
WM. ALLEN BUTLER,
WM. M. EVARTS,
Of Counsel.

New York:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.
1876.

Abstract of Pleadings and Proofs.

THE PARTIES

Complainant.	Respondents.
The Bill was filed by Chas. T. James, and revived by Lucinda James, his Administratrix. Rec. pp. 1. 134.	The Atlantic DeLaine Company, a Corporation, George W. Chapin, Lyman B. Frieze, Rob't E. Northam, Trustee in Bankruptcy of the Atlantic DeLaine Co. Rec. pp. 1. 518.

The bill asks to have:

1. A certain instrument of release declared void as having been procured by the presentation of incorrect and untrue accounts, with intent to deceive, and which did deceive.

2. An accounting.

3. Upon such accounting a conveyance of certain stock in respondents' corporation.

4. And for general relief.

Rec. pp. 5, 6, 7.

Abstract of the Bill.

This is a suit in equity in which Charles T. James, the complainant, substantially charges that, previous to the date of an assignment made by him on the first of September, 1851, to

wit: on the first of January, 1851, he had entered into a contract with certain parties, who subsequently, by agreement made before the date of the contract, became incorporated with himself into a manufacturing corporation known as the Atlantic DeLaine Co., for the building of a mill, &c., in accordance with the terms and specifications of said contract, for the sum of $260,000. That at the time of the agreement so to become incorporated, the complainant subscribed for one hundred and fifty shares of the three hundred into which the capital stock was to be divided, and after the execution of said contract paid in, upon said subscription, the sum of 113,000. The act of incorporation was passed in May, 1851. That one of the provisions of the assignment was, that the assignee should proceed and complete the contract so entered into by the complainant, to appropriate so much of the assigned property as might be necessary, and to charge the assigned estate with obligations to complete the same. The amount expended by the complainant and his assignee, in the completion of the mills and machinery, was about $340,000. The same was completed in a satisfsctory manner, went partially into operation in the latter part of 1851, and fully in June, 1852. Previous to the execution of the assignment, to wit: in July 1851, the complainant, finding himself embarrassed for want of present means to carry on the work under the contract, procured, by way of loan, from the parties interested in the Atlantic DeLaine Co., the sum of $75,000, for which he executed and delilvered to G. W. Chapin, one of the defendants, a mortgage on his stock in the corporation, and on other property, which said mortgage, the bill alleged, it was clearly, distinctly and positively agreed should not be foreclosed against the interest of the complainant in the DeLaine Co., to his injury or that of his estate, but that the said stock should be retained by him and his assignee until it could be disposed of at its full value. The bill further states that after the mills had been completed and the machinery furnished according to contract, the said corporation, through their treasurer, made claims upon the complainant and his assignee for damages for non-fulfilment of contract and for money claimed to have been expended by them for labor, materials, and machinery, which they alleged to have been within the contract with the

complainant, but which are averred to have been unwarranted and unjust, and for which neither the complainant nor his estate were liable. The bill further states that many ineffectual attempts were made, both by the complainant and his assignee, to obtain a statement of the condition of the affairs of the company. After the contract had been completed with a view to the settlement of the claims against him, the complainant procured certain friends of his to offer a sufficient sum to pay his debts provided they could receive and hold the interest belonging to the estate of the complainant in the DeLaine Co. In company with said persons he called for the accounts of the company, but they were refused. On the 5th day of February, 1853, the said Chapin, as trustee, in violation of the agreement heretofore referred to, and his assurance to the complainant, undertook to sell the interest of the complainant in the property mortgaged by him. Thereupon, the defendant, Frieze, the assignee, filed his bill in the Supreme Court of Rhode Island, setting forth that about $32,000 had been paid up on the mortgages, and that the amount still held subject to mortgage was more than sufficient to satisfy the residue of the debt, and that all efforts, on his part, to obtain an account of the condition of the property, in order that the real value of the stock might be ascertained, had been refused by the mortgagee. This bill prayed for an account of the affairs of the company, and was accompanied by a petition for an injunction to restrain the sale. The injunction was subsequently granted until the mortgagee should render a statement of all his knowledge of the affairs of the company to the assignee. Thereupon a statement was presented to the assignee, by said G. W. Chapin, purporting to be a true statement of the affairs of the company, which is averred to be untrue and incorrect, and to have deceived the assignee, who, thereupon, without the consent of the complainant, settled the suit, and all matters unsettled between him and the company, and there were executed mutual releases between the said assignee and the corporation. The bill charges that the settlement and the execution of the release were unauthorized by the complainant, were procured to be executed upon incorrect statements of the accounts between the complainant and the company, which

statements were so made with the intent to defraud and deceive the assignee, and to obtain the stock of the complainant without paying just value therefor. The bill claims that the releases executed by reason of this deceit are void, and that the complainant, having been released from all debts and liabilities then outstanding, with the exception of a judgment obtained on certain notes held by said Chapin, (and which are the property of the corporation, and as such, should be included in an account to be taken between said corporation and the complainant,) is entitled to a re-conveyance of his estate from his assignee; and in addition to his one-hundred and fifty shares of stock, he claims the sum of $55,000, and upwards, for work, labor and materials, furnished with the consent and authority of the corporation, not called for by, nor included in the contract, and that the corporation had no legal claims for any amount equal to said charges, and the value of said stock. He offers to pay any amount in which he may, upon a true statement of the accounts between him and said corporation, appear to be indebted, whenever the stock and securities, now held by them, shall be conveyed to him. The bill prays that the Court may decree the releases thus executed by the assignee, to be void; that the said corporation holds the stock as trustee; that an account may be taken of all the dealings between the complainant and corporation and G. W. Chapin, and that upon the payment of any sum appearing to be due from the complainant to the company, the stock may be decreed to be transferred to him.

Rec. pp. 1–8.

To this bill was filed a DEMURRER.

1. By the Atlantic De Laine Company.

2. By George W. Chapin, each setting forth as causes of demurrer.

1. That the Bill was exhibited for *distinct* matters or causes, &c.

2. That the Bill does not specify in what respects the accounts presented were incorrect and untrue, or in what respect, or in what manner the respondent Frieze was deceived thereby.

Rec. pp. 20, 21, 22.

These demurrers were overruled, but the REASONS FOR THIS DECISION OF THE COURT DO NOT APPEAR ON THE RECORD. Rec. 22.

Abstract of the answer of the Atlantic DeLaine Company, and George W. Chapin.

It admits the assignment, but denies that the assigned property was eight hundred thousand dollars, and avers that it was seventy or eighty thousand dollars. It admits that a portion of the assigned property was the interest of the complainant in the Atlantic DeLaine Company, but denies that that interest was one hundred and fifty shares. It admits the contract for the erection of the mill, and the payment by the complainant of one hundred and thirteen thousand dollars, that the act of incorporation was obtained; that the assignee was to complete the contract. Admits the loan of seventy-five thousand dollars, but denies that the mill was completed according to contract, and then proceeds in these words:

"And these defendants deny that said mill was completed, and said machinery furnished according to said contract; and they admit that said Atlantic DeLaine Company made claims upon said James and upon his assignee, the said Frieze, for damages for the non-performance of said contract, and for certain sums of money which they claimed had been expended by them for labor and materials and machinery, which they alleged to be within the contract of said James; but these defendants deny that said claims were unwarrantable and unjust; but, on the contrary, aver that they were legal, valid and just, and that said James and his assignee, were legally liable therefor and they admit that said Atlantic DeLaine Company persisted in said claims, but deny that they ever refused to make a reasonable settlement of the same with the said James and his assignee. They admit that no settlement was made until the time and in the manner hereinafter mentioned; but they wholly deny that said settlement was delayed by any fault, neglect or refusal on their part, and aver that the delay, neglect and refusal, if any, was wholly on the part of the said James and his assignee.

And these defendants deny that said James, or his assignee, made repeated attempts to obtain a settlement with the said Atlantic DeLaine Company, or demanded that certificates of stock should be issued to said assignee, all which attempts were

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And these defendants deny that said James, or his assignee, made repeated attempts to obtain a settlement with the said Atlantic DeLaine Company, or demanded that certificates of stock should be issued to said assignee, all which attempts were

frustrated by the neglect or refusal of these defendants to render any statement of their accounts with the said James or his assignee; and they wholly deny that a want of such accounts, or of any knowledge of the state of such accounts, formed any obstacle to a settlement on the part of said James or his assignee; and they deny that said James or his assignee ever called for and were refused such accounts, or complained that the same were not furnished; and they aver that said James and his assignee had at all times, full knowledge, or means of knowledge, of the state of such accounts. But these defendants admit, that, from time to time, the said James and the said Atlantic DeLaine Company had conversations about a settlement, which resulted in nothing, sometimes because the propositions made by said James were such that the said Atlantic DeLaine Company could not accept the same; and sometimes because the said James could not, or did not carry out the propositions made by himself, and which the said Atlantic DeLaine Company were willing to accept. These defendants do not know, except as informed by said bill, and have no neans of forming a belief, and cannot state from information or belief, or otherwise, whether at any time, the said James, with a view to the payment of his debts and the settlement of all matters connected with said assignment, and obtaining a reconveyance of said assigned property, procured certain friends of his to advance a sufficient sum of money for the payment of his debts, provided they could receive the interest in the property of the said Atlantic DeLaine Company, which belonged to the said James's estate; but they deny that said James, either by himself, or in company with any person or persons, or in any other way, called upon the treasurer of said corporation for statements of its affairs, and for a statement of its accounts with the said James and with his estate, with a view to the settlement thereof, or for any other purpose, and were refused such statements; and they deny that any such statements were refused by the said treasurer, or that said James, from any want of knowledge, or any inability to obtain knowledge of the state of such accounts, was prevented from obtaining the amount of money, or from making the settlement which he contemplated and desired.

These defendants admit that said George W. Chapin, trustee, advertised the property of said James for sale, under said mortgage, as stated in said bill; but they wholly deny that such advertisement was in violation of any understanding whatever, and aver that the same was done in the exercise of the just and lawful rights of the said Chapin as trustee, and without the violation of any understanding or obligation on the part of said Chapin, or of any of these defendants. And these defendants admit that said Frieze filed his bill in equity, and his petition for injunction in aid thereof, and that thereupon an injunction was granted by the court; but whether the contents, purport and effect of said bill, petition and injunction, are correctly stated in said bill, they cannot state; and for greater certainty, they pray that the said James may be required to prove the same, by producing and verifying the originals, or exemplified copies thereof.

Thus putting in issue these allegations in the bill whether material or not.

THE ANSWER THEN PROCEEDS TO DENY THE SUBSTANTIAL ALLEGATIONS IN THE BILL IN THESE WORDS:

And these defendants admit that the said Atlantic DeLaine Company by their treasurer rendered statements to the said Lyman B. Frieze, assignee of said James, of the accounts between the said James and these defendants, the Atlantic DeLaine Company, and a statement of the affairs of the Atlantic DeLaine Company, and they aver that the same were correct statements; and wholly deny that the said Frieze was deceived thereby, or that the same were incorrect or untrue.

And these defendants deny that thereupon, and without the consent of the said James, and to his express dissent, the said Frieze entertained a proposition from these defendants, or either of them, for the settlement of said suit, which resulted in the withdrawal of the same, and the execution of mutual releases between the said James and his assignee and these defendants; but they aver that said allegation in said bill is in form and substance untrue; and they aver the truth to be, that a proposition originating with a friend of said

James and said Frieze, was entertained by these defendants for a full and final settlement between said James and these defendants, and which finally resulted in the execution of the mutual releases alleged and set forth in said bill. And these defendants deny that said settlement was without the knowledge and against the consent of said James; but, on the contrary, from information and belief, they aver that the same was with the full knowledge and consent of said James, and they further aver that said settlement having been made with a full knowledge of the facts on the part of said James and of his assignee, as full and accurate as they or either of them now possess, was acquiesced in without complaint on the part of said James or his assignee, from the time when the same was made, down to the filing of said bill. And these defendants deny that said James never in any way authorized said settlement or the execution of said conveyances by said assignee, or the acceptance of said release by him, and that he never gave his assent to the same; and they aver that he did authorize and assent to the same, as they are informed and believe; and they deny that the same was procured to be executed on the part of said assignee, and accepted by him by incorrect statements of the accounts between the said James and his said estate, and these defendants or either of them, and of the affairs of the said Atlantic DeLaine Company, or that the same were made with intent to deceive and defraud the said assignee and the said James, and to obtain his shares in the capital stock of the said Atlantic DeLaine Company without paying their just value therefor; and they aver that said conveyance was executed and said release executed with a full knowledge of all the facts, as well on the part of said James as of his said assignee; and that both said James and his assignee were well content to make said settlement at said time; and that by means of said settlement the said James obtained a release of a just, valid and legal claim of the said Atlantic DeLaine Company against him for a very large amount, for which his said release was a wholly inadequate consideration.

And these defendants deny that any attempt was ever made to foreclose the mortgage on said stock by the sale thereof under the power contained in said mortgage, without rendering a

proper statement of the affairs and condition of said corporation; and they deny any refusal to render the same when requested so to do by the said Frieze, and they deny all intent to obtain said stock at less than its fair value to the injury of said James or of his estate in the hands of his said assignee."

THE ANSWER MEETS EVERY MATERIAL ALLEGATION IN THE BILL WITH A PLAIN AND SPECIFIC DENIAL, AND WITH DISTINCT AVERMENTS AS TO WHAT WAS THE TRUTH AS TO THE SUBJECT MATTER OF THE ALLEGATIONS.

Lyman B. Frieze filed an answer out of time and by agreement.

See Rec. 110 to 116.

The answer of this respondent admits certain formal matters about which there is no controversy; says he is ignorant as to the other allegations, except as to the presentation to him of incorrect and untrue accounts, with intent to deceive and by which he was deceived, and as to this allegation his answer is in these words:—

"And this respondent, further answering, admits that subsequently said George W. Chapin, as treasurer, rendered this respondent a statement of the condition and affairs of said corporation; but whether the same was correct and true, or not, and whether or not this respondent was deceived thereby, he is unable to state or admit from knowledge, recollection, or information, but has no reason to believe it was incorrect or untrue, or made with any intent to deceive this respondent; and does admit that, subsequently, he did entertain a proposition from said corporation for the settlement of said suit, which resulted in the withdrawal of the same, and the execution of mutual releases between this respondent and said corporation, which releases are marked "C" and "D," (Rec. pp. 17, 18), and to complainant's said bill annexed; and that said corporation at the same time executed a release to said complainant; and further states that he has no knowledge or remembrance, information or belief, that said complainant expressed any dissent to the same, and therefore does not admit any express dissent, as in complainant's said bill is alleged."

"And further answering, this respondent avers that he cannot

state upon knowledge or information whether or not said settlement, conveyance and acceptance of said releases were procured to be executed and accepted by incorrect statements of the accounts between said complainant and his estate and said company, and the affairs of said corporation, nor whether the same were made with intent to deceive and defraud this respondent and said complainant, and to obtain the shares in the capital stock of said corporation without paying a just value therefor; but he has no reason to believe said statements were incorrect, or made with any intent to deceive and defraud this respondent and said complainant, and to obtain the shares of stock without paying a just value therefor; nor can he state upon knowledge or information, whether or not the attempt to foreclose the mortgage, without rendering a proper statement of the affairs and condition of said corporation, as in said complainant's bill is alleged, and as this respondent has hereinbefore admitted, he, in his said bill and petition herein referred to alleged, was with the intent to obtain the stock at less than its fair value, and that the acts of said corporation, and its treasurer and officers, with regard to said stock and sale, were done for the purpose of deterring purchasers from bidding at said sale, and to obtain said stock for less than its fair value, to, the injury of the said complainant and his estate, in the hands of his assignee; BUT HAS NOW NO REASON TO BELIEVE THAT SAID ACTS WERE DONE FOR THE PURPOSE OF DETERRING PURCHASERS FROM BIDDING AT SAID SALE, OR TO OBTAIN SAID STOCK AT LESS THAN ITS FAIR VALUE."

"And this respondent, further answering, says that he is unable to state, upon knowledge or information, whether or no the conveyance by him of said stock was and is utterly void, by reason of the fraud and deceit alleged in said bill of complaint to have been practised upon this respondent, BUT HAS NO REASON TO BELIEVE THAT ANY FRAUD AND DECEIT WAS PRACTISED UPON THIS RESPONDENT BY SAID CORPORATION OR ANY OF ITS OFFICERS."

Replications to the answers were duly filed.

Rec. pp. 27, 117.

THE ALLEGATIONS IN THE BILL.

1. That the assignment was made.
2. That the contract for building the mill was made by parties who afterwards became incorporated.
3. That James subscribed for 150 shares of the stock and paid in, in the manner set forth in the answer, $113,000 on account of such subscription.
4. That Frieze filed a bill and obtained an injunction, &c.

ARE ADMITTED TO BE TRUE.

But

1. The amount alleged by James to have been expended in the execution of the contract,
2. That the mill was completed within the time provided in the contract,
3. That the claims for damages and money expended, etc., were unwarranted and unjust,
4. That ineffectual attempts were made to obtain a statement of the affairs of the company,
5. That the complainant procured friends to offer a sufficient sum to pay his debts, etc., and that in company with them he called for accounts which were refused,
6. That Chapin undertook to sell, etc., *in violation of the agreement*, etc.,

ARE NOT ADMITTED AS [SET FORTH IN [THE BILL AND ARE NOT MATERIAL.

THE ESSENTIAL ALLEGATION IN THE BILL IS THAT INCORRECT AND UNTRUE ACCOUNTS WERE PRESENTED WITH INTENT TO DECEIVE, AND WHICH DID DECEIVE. IF THIS ALLEGATION IS NOT SUSTAINED THE BILL MUST BE DISMISSED.

THE FOLLOWING ARE THE ERRORS AS CLAIMED BY THE RESPONDENTS.

1. The demurrers were overruled, whereas they should have been sustained.

2. The allegation in the bill, that incorrect and untrue accounts were presented with intent to deceive and which did deceive, was found by the decision of the court to be true, whereas it should have been found to be untrue.

3. The court should have confirmed the first report of the master and passed a proper decree pursuant thereto, whereas the court refused so to do, and recommitted the case to the master with instructions.

4. Upon the coming in of the second report of the master, and the opening of the case for further testimony, and after such testimony had been taken, and hearing had upon the same, the court should have reversed the interlocutory decree and dismissed the bill, whereas they refused so to do, and recommitted the case to the master with instructions.

5. Upon the coming in of the third report of the master, the court should have sustained the exceptions of the respondents to the second and third reports of the master, and should have confirmed his first report, whereas they refused so to do.

6. The court, in stating the account prayed for in the bill, took into the account the transactions of the defendant corporation subsequent to the date of the instrument of release and settlement which was declared to be void by the interlocutory decree, whereas they should have confined the accounting to the time prior to and at said date.

7. The court held the respondents to account as mortgagees

wrongfully in possession of the mortgaged property, and held the respondents accountable for profits and refused to credit them with losses, whereas the respondents were not mortgagees wrongfully in possession, and ought not to have been held accountable as such; and should not have been held accountable in this bill, for any transactions subsequent to the execution of said instrument of release and settlement.

8. The court, by the final decree, held George W. Chapin individually responsible for the sum ascertained by such decree to be due to the complainant, whereas the said Chapin was not individually responsible therefor, and should not have been held to be so.

9. The court affirmed the right of the complainant to maintain the bill, although he neglected to exhibit the same for six years (lacking one day), with a full knowledge of all the facts and without any allegation or proof of any cause for the delay, whereas they should have dismissed the bill for this *laches*.

10. The court affirmed the right of the complainant to maintain the bill, although it was proved that debts to a large amount were outstanding, against the assigned estate in the hands of the assignee, whereas for this reason the bill should have been dismissed.

AS TO THE ACCOUNTS PRESENTED.

The essential allegation in the bill without proof of which the complainant has no case is:

That incorrect and untrue accounts were presented, with intent to deceive, and which did deceive, etc.

This is the precise language of the charge.

"And your orator further avers that thereupon, the said corporation, by their treasurer, George W. Chapin, rendered certain statements to the said defendant, Lyman B. Frieze, assignee of your orator, as aforesaid, which he pretended were a proper statement of the accounts between said complainant and said defendant corporation, and a correct statement of the affairs of the said defendant corporation, which statement your

orator avers to have been incorrect and untrue; and that the said defendant, Lyman B. Frieze, was deceived thereby, and thereupon, and without the assent of your orator, and to his express dissent, the said defendant, Lyman B. Frieze, entertained a proposition from the said defendant corporation for the settlement of said suit, which resulted in the withdrawal of the same, and the execution of mutual releases between the said defendant corporation, which releases are hereto annexed, marked "C" and "D," and made parts of this bill."

Rec. pp. 5, 6.

That this is the *material* charge appears from the frame of the bill and from

THE OPINION OF THE COURT.

"Material charge of the bill of complaint is that the statement so furnished was incorrect and untrue, and that it was so made and rendered with intent to deceive and defraud the assignee, and that the assignee was thereby deceived as to the true state of their accounts, and that he was thereby induced to entertain a proposition which resulted in a withdrawal of the injunction suit, and in the execution of mutual releases between him, as such assignee, and the respondent corporation in respect to the entire interest of the complainant in all the assigned and mortgaged property. Averment of the bill of complaint is that the complainant never assented to the proposition or to the settlement, but that the same was influenced and procured by the false statement of the accounts between the parties, as rendered by the treasurer of the respondent corporation. Prayer of the bill of complaint is that the release given by the assignee to the respondent corporation may be declared void, and that it may be set aside as having been obtained by fraudulent representations and concealment, and for an account, and for other specific relief as prayed for in the bill of complaint. PRINCIPAL ISSUE BETWEEN THE PARTIES GROWS OUT OF THE CHARGE OF FRAUDULENT REPRESENTATION AND CONCEALMENT, WHICH IS EXPRESSLY DENIED IN THE ANSWER"

Rec. p. 214.

The evidence in the case, the arguments of counsel, the opinion of the Court, refer to only one account which is claimed to have been incorrect and untrue.

This is the language of the Court:

"Full proof is also exhibited that the treasurer of the respondent corporation was several times requested to furnish a true statement of the accounts between the parties, AND THAT THE ONLY ONE HE EVER DID PRESENT deserving the name is the one he presented, or caused to be presented, to the assignee, and which was used as the basis of the computations at the date of the settlement. Beyond question that statement was inaccurate in large amounts, and greatly so to the prejudice of the original complainant."

"Viewed in every aspect, it is the conclusion of the court not only that it was false, but that it was furnished with the intent to deceive and defraud, by promoting a settlement prejudicial to the original complainant, and more favorable to the respondent corporation than truth and justice would admit. Such being the views of the Court, it is clear that the complainant is entitled to a decree, unless some one or more of the defenses can be sustained."

Rec., p. 215.

IT WILL BE OBSERVED HERE THAT THE COURT DO NOT SPECIFY ANY ERRORS OR REFER TO ANY EVIDENCE.

This is the account which was presented. It appears in several places in the record.

It is annexed to the deposition of George W. Chapin as Exhibit I.

See Rec. pp. 182, 183.

Statement of the Atlantic DeLaine Co., January 1st, 1853.

Bills payable	$410,615.39
Due agents for advances on goods	90,026.19
Due various persons on account	51,404.44
Capital stock	237,495.53
	$789,541.55

Credit.

Cash and bills receivable, on hand	$13,584.92
Cost of real estate, cassimere department, and amount paid Charles T. James' contract-account	310,006.04
Due from Lyman B. Frieze, assignee	53,314 77
Due from sundry persons	2,061.38
Wool, cotton, and supplies at mill	190,692.17
DeLaines, cassimeres on hand	149,516.74
Balance	70,365.53
	$789,541.55

I would state our directors estimate that $50,000, or more, of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

(Signed) GEO. W. CHAPIN, Treasurer.

Providence, Feb. 26, 1853.

The respondents claim that this statement was literally correct and true. Before examining the evidence upon this subject, it may be well to consider

1. THE RELATION OF THE PARTIES TO EACH OTHER AT THE TIME WHEN THE STATEMENT WAS MADE.
2. THE PURPOSE FOR WHICH IT WAS MADE.
3. THE USE WHICH WAS MADE OF IT.

This case has been presented by counsel, as if the defendant corporation, desiring to obtain a settlement with the complainant, had caused their treasurer to present this statement to accomplish that object, and as if the assignee DECEIVED by the statement, ENTERTAINED and assented to a PROPOSITION OF SETTLEMENT MADE BY THE DEFENDANT.

This would seem also to have been the impression made upon the mind of the court. The court say, reciting the allegations of the bill, "That the assignee was thereby deceived as to the

true state of their accounts, and that he was THEREBY INDUCED TO ENTERTAIN A PROPOSITION OF SETTLEMENT (Rec., p. 214), and in giving judgment the court sustain this allegations saying" IT (the statement) was furnished with intent to deceive and defraud BY PROMOTING A SETTLEMENT, etc. (Rec., p. 215).

Exactly the reverse of this is the truth.

I. WHEN THE STATEMENT WAS MADE THE DEFENDANTS WERE UNDER INJUNCTION BY THE SUPREME COURT OF RHODE ISLAND UNTIL SATISFACTORY STATEMENTS WERE MADE.

II. THE STATEMENT WAS MADE TO OBTAIN A DISSOLUTION OF THE INJUNCTION, WITH FULL KNOWLEDGE THAT IT MUST BE MADE SATISFACTORY TO THE COMPLAINANT AND HIS ASSIGNEE AND TO THE COURT.

III. AFTER RECEIVING THIS STATEMENT AND GIVING IT A FULL EXAMINATION, IN CONSULTATION WITH HIS FRIENDS AND THE FRIENDS OF THE COMPLAINANT, THE ASSIGNEE PROPOSED A SETTLEMENT, TO WHICH, AFTER MUCH DELAY, THE DEFENDANT CORPORATION RELUCTANTLY CONSENTED.

Before proceeding to establish these propositions by references to the record, it will perhaps, be well to present in succint form

A HISTORY OF THE TRANSACTION.

George W. Chapin, trustee for certain parties, stockholders in the defendant corporation, had, on the 5th day of February, A. D. 1853, advertised for sale, on the 26th day of the same month pursuant to the power of sale, in a mortgage, the *stock* of the complainant in the defendant corporation. The complainant, having failed to obtain a postponement of such sale by negotiation, applied to the Supreme Court of Rhode Island, on the 22d day of February, A. D. 1853, for an injunction against said sale, and for a statement and account of the business and condition of the defendant corporation. And subsequently, and before the time appointed for said sale, the court enjoined the sale of said stock UNTIL THE SAID CHAPIN HAD COMMUNICATED TO THE PETITIONER ALL THE KNOWLEDGE HE HAD OF THE AFFAIRS OF SAID COMPANY WHICH AFFECTED THE VALUE OF SAID SHARES OF STOCK. (See allegation in the bill, Rec. p. 5). There-

upon, upon the 26th day of February, A. D. 1853, the treasurer of the company presented to the assignee of Gen. James a statement of the condition of the company, on the 1st of January, 1853.

The assignee with this statement in his hands, in possession of the books and papers of the complainant, with full right of access as a stockholder to the books and papers of the defendant corporation, the stock of the complainant protected from sale by order of court until the assignee should have to his satisfaction *exhausted the knowledge of the treasurer as to the condition of the company*, with full opportunity to consult, and actually consulting, his friends and the friends of the complainant, proposed a settlement, which was agreed to on the 2d day of March, A. D. 1853, of which settlement the complainant *then* had notice, but the mutual releases in execution of the settlement were not delivered and exchanged until the 11th day of March, A. D. 1853. The assignee, who was fully authorized to make this settlement has never made any complaint of it, and the complainant, with full opportunity to protest against it, and with all the knowledge he then had, or ever had of the circumstances under which it was made, never made any complaint of it to his assignee, to his friend by whom the settlement was advised, nor to the defendant corporation or any officer or stockholder thereof, until he exhibited this bill on the 1st day of March, A. D. 1859, six years after the settlement (lacking one day), AND THIS WITHOUT ANY ALLEGATION OF NEWLY DISCOVERED FACTS OR ANY EXPLANATION OF THE DELAY.

THE RELATIONS OF THE PARTIES TO EACH OTHER AT THE TIME WHEN THE STATEMENT WAS MADE.

Charles T. James made a contract with certain parties, to erect for them a mill for $260,000. The parties to the contract, including Gen. James, were to be incorporated, with a capital

of $300,000, of which Gen. James was to subscribe for $150,000. The contract was dated January 1st, 1851.

Rec. p. 15.

The parties were incorporated at the May session of the General Assembly of Rhode Island, A. D. 1851.

Rec. p. 2.

The contract was assumed by the corporation August 1st, 1851.

Rec. p. 17.

In July, A. D. 1851, Gen. James procured a loan from certain of the parties interested with him in the corporation, to enable him to carry on the work under the contract, of $75,000, secured by a mortgage of other property and HIS STOCK IN THE CORPORATION, to George W. Chapin, trustee.

Rec. p. 3.

Gen. James applied for this loan by letter July 28th, 1851.

Rec. pp. 178, 179.

The corporation not being able to hold a meeting in time to authorize the loan, it was made by the stockholders, with the exception of two, one of whom had a small interest and the other one was financially in trouble.

Rec. p. 156, deposition of George W. Chapin, int. 7.

This mortgage was made without any such understanding that it should not be enforced, etc., as is set up in the bill.

Rec. p. 3.

Aside from the fact that such an understanding is quite too vague to be enforced, and that no proof whatever is offered in support of it, it is distinctly denied by all the parties.

Rec. p. 156, deposition George W. Chapin, In. 8.

Rec. p. 65, deposition Joseph Lea, In. 3.

Rec. p. 130, deposition Edwin Hoyt, In. 4.

Rec. p. 138, deposition Josiah Chapin, In. 4.

The circumstances under which the loan was asked for and made as detailed by these witnesses, show that no such understanding could have been in the minds of either party. General James had no doubt of his ability promptly to repay

the loan, and so represented. These witnesses though parties to this contract, are not parties to this suit, and with the possible exception of George W. Chapin are competent witnesses to this transaction. And George W. Chapin does not in this matter testify to any transaction with General James, but that no such transaction was ever had.

On the second of September, A. D. 1851, General James made an assignment providing for the completion of the contract for the erection of the mill by his assignee.

Rec. pp. 8-13.

Lyman B. Frieze, his assignee, had, prior to the assignment, been the "clerk and attorney" of General James, and was, therefore familiar with his books, accounts, etc.

Rec. p. 423, cross in. 2 and 3.

The assigned property was not sufficient to enable the assignee to complete the contract for the erection of the mill, and he was compelled to obtain means from the defendant corporation for that purpose.

Rec. p. 164, deposition of George W. Chapin, In. 32.

Rec. pp. 202–205, Assignee's account.

Rec. p. 359, Master's Report.

General James failed to repay the loan of $75,000 according to its terms, and George W. Chapin, trustee, advertised the mortgaged property for sale on the 5th day of February, A. D. 1853, the sale of other property embraced in the mortgage to be on the 25th day of February, and of THE COMPLAINANT'S STOCK in the defendant corporation, on the 26th day of February, A. D. 1853.

Rec. p. 4, Allegation in the Bill.

Prior to the advertisement, negotiations were had for delay, failing which, after the advertisement, sundry schemes to obtain delay were agitated between General James and his assignee, as will appear in the letters of Frieze to James, among which was the possibility of getting an injunction against the sale.

A CAREFUL READING OF THESE LETTERS WILL SHOW:

(1.) That James was embarrassed financially,

(2.) That he was perfectly aware of what was going on from day to day,

(3.) That neither he nor his assignee had any such understanding that the mortgage was not to be enforced as is alleged in the Bill,

(4.) That Frieze did not believe that he had any sufficient grounds for an injunction for want of a statement of the condition of the company. "I THINK THE CHANCES OF ANY INJUNCTION ON MY PART LOOKS VERY DOUBTEUL AS I AM UNABLE TO BRING FORWARD MUCH PROOF." (Letter of February 16th, 1853, Rec. p. 471.

See Rec. pp. 469–474, pp. 152–154.

We shall refer to these letters in another connection. They are very instructive as to the motives which induced the settlement.

An injunction was prayed for and obtained, the statement was made, and motion for the dissolution of the injenction was filed.

Rec. pp. 5, 452, 453.

At the time, therefore, when the statement was made, the complainant and his assignee were protected against any sale of the stock of the complainant until they were fully informed as to its condition and value. That they realized the advantages of their position appears from the letter of Frieze to James, dated February 26th, 1853, in which he says, "THE NEXT FIGHT IS FOR THE DELAINE STOCK, ETC., WHICH IS HUNG UP TILL A STATEMENT CAN BE MADE, AND IT MUST BE VERY SATISFACTORY TO SUIT ME, OTHERWISE I SHALL APPLY FOR AN INJUNCTION AS A STOCKHOLDER, ETC." (Letter from Frieze to James, Rec. p. 473).

This was on the very day when the statement was made, and if it was blind, or unsatisfactory, or false, here was OPPORTUNITY and DISPOSITION to examine it.

THE PURPOSE FOR WHICH THE STATEMENT WAS MADE.

It was not to induce or procure a settlement, but to obtain a dissolution of the injunction, and go on with the sale.

The defendant corporation had tho strongest possible motive to make the statement promptly, and have it correct and satisfactory.

The petition was filed on the 22d day of February (Tuesday). The citation was returnable on the 24th (Thursday), the injunction decree could not have been earlier than the 24th, and on the 26th the statement was presented (Saturday), and on the 28th motion to dissolve the injunction was made (Monday), and the hearing on this motion postponed to March 8th, A. D. 1853.

Rec. p. 453.

With the statement was sent a letter offering to furnish any further information that might be desired.

Rec. p. 183.

These proceedings would seem plainly to show what was the motive and purpose of the defendant corporation in presenting this statement.

That they were not seeking a settlement is plain.

SEE DEPOSITION OF JOSEPH LEA, Rec. p. 67, In. 9 and In. 15.

To the 9th interrogatory, he saith: Some time during the winter of 1852–1853, James made a proposition for settlement, and the release of the mortgage: but as part of the pay was to be in his notes, without security, it was not accepted, but declined. We met in New York for the purpose of effecting a settlement, if possible, but without success.

To the 15th interrogatory, he saith: I have no personal knowledge as to who first suggested the mutual release between the assignee and the company. Such mutual release was made and, I approved it, because I considered the prospect hopeless of our getting pay for damage, or of James ever being able to raise the money to pay off his debts; and all were desirous of settling our accounts, and ascertaining our position. At that time, the directors would have gladly sold James's stock and the whole concern for vastly less than it had

cost them ; as in April, 1853, the Atlantic Company authorized me to sell the entire property for a sum which would barely pay thir debts, making the entire stock an almost total loss ; at which time, both Mr. George W. Chapin, Mr. Carpenter, and myself considered the stock about worthless. The settlement was very advantageous to said James, and would not have been made if he had been solvent.

SEE DEPOSITION EDWIN HOYT, Rec. p. 130, In. 9 and In. 15th.

To the 9th he saith : Some time in the spring of 1852, James made some propositions to the company for a settlement, but its offers were not satisfactory, and were declined by them. I do not remember details. I was not treasurer of the company.

To the fifteenth he saith : A proposition was made for a full and final settlement between the company and Frieze, the assignee, by which the company were to take all James's stock in said company for their demand against him. The directors considered the stock almost or quite worthless ; yet, being desirous to close their accounts and connection with James, and despairing of getting anything more from him, concluded to settle in that way. Am not positive who first suggested the releases. Think I did. I considered it proper that a full and final settlement should be made on both sides. We therefore gave releases on both sides.

SEE DEPOSITION JOSIAH CHAPIN, Rec. p. 139, In. 9 and p. 140–1, In. 15.

Ans. I know that the directors were desirous to make a settlement with Gen. James and with his assignee, and Gen. James made propositions for a settlement in 1852, and, as I understood, met some of the directors in New York several times. I was not present at any of those meetings.

Ans. Mr. George B. Holmes called at George W. Chapin's counting room at or near the time of settlement, and, I believe, proposed that an effort be made for a settlement between the Atlantic DeLanie Company and Lyman B. Frieze, assignee of Gen. James. He appeared to me to be acting under the advice of Gen. James, and advisor of Mr. Frieze, as assignee.

I then and still believe that Mr. Holmes and the assignee, one or both, were directed by Gen. James in regard to the proposed settlement, from their course pursued. Who made the first proposal which resulted in the settlement, I am unable to call to mind. The amount due from Gen. James's estate to the Atlantic DeLaine Company was about $85,000 in addition to their claim for damages, and was believed by the directors to be greatly more than the value of James's stock in the company, and they refused to settle with Gen. James's assignee on the terms proposed—that is, allow for the stock the amount of James's indebtedness. Whether there was any value to the stock at that time, was very uncertain. After learning that we had nothing to expect from the assignee, though the Atlantic DeLaine Company were preferred creditors in the first class, if we did not accept the proposal, and a dark prospect for the future from Gen. James, I urged the directors, under these circumstances, to settle the business, though no one could think more unfavorably of the worth of the stock than myself. The directors very unwillingly reconsidered their decision, and accepted the proposal of James's assignee, and thereupon executed mutual releases between the Atlantic DeLaine Company and Lyman B. Frieze, assignee of Charles T. James.

SEE DEPOSITION GEORGE W. CHAPIN, Rec. 158–9, In. 13, and Exhibits F and G, Rec. pp. 180–1.

Ans. On the 10th of April, 1852, Gen. James made a proposition of settlement, a copy of which is annexed, marked "F." This proposition was submitted to the different members of the company, and after considerable correspondence and consultation, and meeting and listening to the statements of Gen. James, and to various proposed modifications of the propositions submitted by him, it was rejected. At the time these propositions were made, all parties were fully confident that the trustee had ample property in his hands to pay all his claims, and said propositions were declined because they required a disharge of mortgages and liens for no consideration but his own notes on time, which were considered worthless. A reference of all matters in dispute between the parties was

once proposed, I think by Gen. James. The agreement was drawn up by and in the handwriting of Mr. Frieze, and duly signed, but nothing was ever done under it. I have an impression that the referees declined to serve. I annex a copy of said agreement, marked "G."

See also In. 23, Rec. p. 161.

Ans. Some days after I had furnished to Mr. Frieze the statements referred to in my answer to the 21st interrogatory, Mr. George B. Holmes called at my office, to wit, on the 28th of February, 1853, and my impression is he said he came as a friend of Frieze and James. He inquired if an adjustment of the matters in dispute between us and Gen. James and his assignee might not be made without further litigation. This was the commencement of negotiations for a settlement. After communicating this proposition to the stockholders, these negotiations were continued for several days, and resulted in mutual releases between the parties. I cannot tell who first proposed this mode of settlement, but my impression is that the proposition was made by the parties representing Gen. James. Mr. Hoyt was in Providence, and took part in the negotiations. The papers between the company and trustee, and the assignee of James, were signed March 5, 1853, and placed in the hands of Mr. George B. Holmes, until the individual releases of the stockholders were obtained. These did not come to hand until after the 10th of March, after which the papers above mentioned were exchanged. The company made the settlement agreed upon with great reluctance, feeling that they were receiving scarcely any value for the large amount of money loaned. Nothing but the fact that there was no possibility of obtaining anything more from James or the assignee led them to make it. When the $75,000 loan was made to James, the parties supposed they received securities to the value of at least $100,000, independent of his interest in the DeLaine Co.; and as late as June, 1852, at which time some negotiations took place between them and James, said parties were confident that the trustee had sufficient property in his hands to pay off the loan without foreclosing the mortgage on James' interest in the company. At that time, June, 1852, none of the property had been sold but the stock on the Warwick farm, realizing about

$1,300. The mortgage on the homestead was valued at $20,000, but realized only $9,800.50. The mortgage on the Warwick farm was valued at $10,000. It only realized $5,786.79. The mortgage on the Scituate farm was valued at $3,000. Nothing was realized from it. The $50,000 Cannelton notes were valued at par. We obtained only $21,000 for them. These notes were secured by a mortgage on the Cannelton Mill in Indiana, which James had built for the Cannelton Co. He received in part payment therefor their acceptances of his drafts. These mortgage notes were put into his hands by the company for negotiation, the proceeds to be applied to the payment of said acceptances of his drafts. In violation of this trust he pledged said $50,000 of notes to me, as trustee, in part security for the $75,000 loan. His drafts on the Cannelton Co., which he had negotiated with various parties, went to protest, the company having failed. The different holders of these drafts claimed of me said mortgage notes as their property, on account of the agreement made by James with the Cannelton Co. To avoid litigation I was obliged to compromise with them for $21,000.

See Deposition L. B. Frieze, Rec. pp. 145–6. In. 12, 13.

12th ques. State whether or not you proposed, through any person to negotiate for a settlement between yourself, as assignee, and the said Atlantic De Laine Co. and said Chapin. If so, through whom was said proposition made?

Ans. "I think I made no proposition to the De Laine Co. in the commencement of the negotiations for a settlement. Mr. George B. Holmes acted for me in the final adjustment of matters."

13th ques. "State whether such negotiations were had, how long they continued, with what friends of Gen. James, if any, you consulted about the same; whether while such negotiations were pending, you knew the condition of the Atlantic DeLaine Co., of the assigned estate in your hands, and the state of the accounts between yourself and the said Atlantic DeLaine Co., and said Chapin. Did such negotiations result in a settlement? and if you say that they did, state the fact which induced you to make said settlement."

Ans. "Negotiations were had which continued for several

days, and resulted in a settlement in the early part of March, 1853, when mutual releases were executed and placed in the hands of George B. Holmes until the individual releases of each member of the company could be obtained. I think Mr. Holmes, Nathaniel F. Potter, and Henry W. Gardiner, who were then all friends of Gen. James, were consulted about the matter. I did know of the condition of the DeLaine Co. from their statements, and from the general condition of business at that time. I knew what was the condition of the assigned estate, and of the accounts between myself and said Chapin and the company from my own book and from their accounts. I made the settlement on the ground that we though it was the best thing that could be done for the estate."

The Use which was made of the Statement.

IT WAS RECEIVED BY THE ASSIGNEE; HE HAD AMPLE OPPORTUNITY TO EXAMINE IT, UNDERSTOOD IT, MADE NO FURTHER INQUIRY OF THE TREASURER, BUT CONSULTED THE FRIENDS OF GEN. JAMES, EXAMINED THE BOOKS AND ACCOUNTS, TO WHICH HE HAD FREE ACCESS AT ALL TIMES, AND THROUGH MR. HOLMES, PROPOSED A SETTLEMENT WHICH WAS VERY FAVORABLE FOR GEN. JAMES, AND TO WHICH THE COMPANY RELUCTANTLY ASSENTED.

See the citations made under the last point to the depositions of Lea, Hoyt, Josiah Chapin, Geo. W. Chapin and Frieze, and in addition thereto.

See deposition L. B. Frieze, Record, pp. 145, 146 int. 6, 7, 8, 9 and 12.

See DEPOSITION OF GEO. B. HOLMES, Record, pp. 78–9.

George B. Holmes, of Providence, being duly cautioned and sworn according to law, deposeth and saith in answer to the several interrogatories put by the respondents:

In answer to the first interrogatory, he saith: About 67 years of age. My residence is in Providence, R. I. I am an iron-founder by occupation.

In answer to the second interrogatory, he saith: I called upon George W. Chapin about the first of March, 1853, at the request of Lyman B. Frieze, assignee of Charles T. James, to see if any arrangement could be made towards the settlement of Charles T. James's matters and accounts with the Atlantic DeLaine Co. I acted as adviser to Lyman B. Frieze, assignee. I proposed to Geo. W. Chapin, trustee, to have the whole matter settled.

In answer to the third interrogatory, he saith: The negotiations were under consideration by the parties some three or four days. A settlement was made, and releases were written and signed by the parties and placed in my hand, TO BE HELD BY ME UNTIL THE PROPER PAPERS COULD BE PREPARED AND PROPERLY executed by the parties. The papers were in my hands three or four weeks.

In answer to the fourth interrogatory, he saith: There was such a statement before me, and I understood it came from the Atlantic DeLaine Company, and Mr. Frieze or Mr. Parkhurst handed me the statement. FROM IT, AND THE BOOKS, AND ACCOUNTS OF THE COMPANY WITH MR. FRIEZE AND GEN. JAMES, I made up the annexed statement marked "A," in order to see what James's interest would be worth. I estimated his stock to be worth seventy per cent. At that value he would be left $2,574.00 in debt. WITH THE INFORMATION I OBTAINED ELSEWHERE, FROM DISINTERESTED PARTIES, AS TO THE VALUE OF SAID STOCK, AND SEEING THE COMPANY WERE HEAVILY IN DEBT, AND ASCERTAINING THAT THE STOCK COULD NOT BE SOLD FOR FIFTY CENTS OF ITS PAR VALUE, AND FINDING THERE WAS NO SALE FOR IT, UNDER THESE CIRCUMSTANCES I ADVISED MR. FRIEZE TO SETTLE THE WHOLE MATTER.

In answer to the fifth interrogatory, he saith: I had several conversations with Mr. Parkhurst in regard to the DeLaine Mill account. I have no recollection of saying any such thing respecting the statement furnished to Mr. Frieze by the Atlantic DeLaine Company. On first looking at the statement I did not understand it, and my impression was that the company had made some seventy thousand dollars; but on a more particular examination there was no difficulty in finding that they had lost a large amount of money.

In answer to the sixth interrogatory, he saith: There were several dispatches passed between Gen. James and Mr. Frieze while the negotiations for a settlement were in progress, and I have no doubt I saw them; but it is so long since I cannot recollect their contents. I HAVE NO RECOLLECTION OF GEN. JAMES MAKING ANY OBJECTION TO THE SETTLEMENT.

In answer to the seventh interrogatory, he saith: Previous to that time they had been intimate. I had no business relations with Gen. James at that time, except concerning his mansion-house, which I purchased at the Trustee sale. Saw him frequently after the settlement, on his return from Washington, and conversed about his business affairs. He said nothing about the settlement. HE NEVER MADE ANY COMPLAINT ABOUT IT TO ME.

In answer to the eighth interrogatory, he saith: No recollection of anything else.

And in answer to the several cross-interrogatories propounded on behalf of the complainant, the said deponent deposeth and saith as follows:

In answer to the first cross-interrogatory, he saith: There were other papers besides the statement before me, such as the books and accounts of the assignee and the accounts of the company with Frieze & James.

In answer to the second cross-interrogatory, he saith: My advice was founded upon the statement and accounts before me, and the general value of the property, and from the best information I could obtain, and from my own judgment.

See also exhibit annexed to the deposition of Holmes.

Record, p. 133, as follows:

Paper marked "A," referred to in dep. of Geo. B. Holmes.

113 shares, cost $1,000 each.....	$113,000.00
Less 30 per cent.....	33,900.00
	$79,100.00
Balance due on contract.....	29,000.00
	$108,100.00

Claims against James' mortgage....	$42,350.00
Assignee's acknowledged acc't.....	53,324.00
Claims against contract....	15,000.00
	$110,674.00
Minus.....	$2,574.00

The mill was contracted to be finished August, 1851; it was completed February, 1852.

There is also a claim for non-fulfillment of contract, subject to decision of referees appointed and agreed upon—no interest charged on money advanced to assignee.

AND JAMES KNEW ABOUT THIS SETTLEMENT AT THE TIME.

In addition to Holmes' deposition just cited,

SEE DEPOSITION. LYMAN B. FRIEZE, Rec. p. 146, In. 14, 15.

Ans. I communicated to Gen. James the fact of the negotiations and the proposed terms by letter while the matter was pending, and I think I received a dispatch from him in reply; the dispatch is not in my possession, neither do I know where it is; but I think it was received before the execution of the releases; I don't recollect the contents of that dispatch; I cannot give the precise date; I turned over nearly all my documents and papers to Gen. James, which were connected with this matter.

15th ques. State how soon after such settlement you saw the said Charles T. James, and whether he then knew that the same had been made, and what, if anything, he then said in relation to the same, and whether, at that time, he found any fault with or objection to the same?

Ans. I cannot say how soon after the settlement I saw Gen. James, but he was aware of it before he returned to Providence from Washington; I do not recollect of his ever finding any fault with my settlement with the DeLaine Company till a short time before he commenced this suit.

See deposition of Jacob Frieze, Rec. p. 76.

DEPOSITION OF JACOB FRIEZE.

I, Jacob Frieze, being duly sworn according to law, on oath depose and say, in answer to the several interrogatories propounded to me on the part of the respondents:

In answer to the first interrogatory, he saith: I am seventy-one years of age; I reside in North Providence; writing is my occupation.

In answer to the second interrogatory, he saith: I then resided in the same place; and I was then employed as clerk of one of the committees of the U. S. Senate at Washington; I cannot say that I was in the employ of Gen. James; I wrote for him whenever he required it, but I was in the employ of the Senate and was paid by them.

In answer to the third interrogatory, he saith: I know that that letter was received, because he gave it to me, and consulted with me on the subject. I do not know where the letter is. The substance of that letter was a proposition from the Atlantic DeLaine Company for the settlement of the affairs between the company and Gen. James. Gen. James showed me that letter in Washington, at the National Hotel.

That letter was received in March, 1853.

In answer to the fourth interrogatory, he saith: He did. After I had read the letter he said to me, "They have got from me the most of what I had, and now want the rest." Those were, I think, his words. HE THEN ASKED ME WHAT I THOUGHT HE HAD BEST TO DO ABOUT IT. I TOLD HIM THAT PROBABLY THOSE WERE THE BEST TERMS THAT LYMAN, HIS ASSIGNEE, COULD OBTAIN; THAT PROBABLY IT WAS BETTER TO SETTLE IT IN THAT WAY THAN NOT AT ALL. AFTER SOME FURTHER IMMATERIAL CONVERSATION, HE SAID HE SUPPOSED THAT IT WAS THE BEST HE COULD DO, AND SHOULD CONSENT TO THEM.

In answer to the fifth interrogatory, he saith: I cannot say whether an answer was expected or not. I presume and feel quite positive that there was; but I should not dare to say explicitly that such was the case. I haven't it, nor any copy of it, and cannot state its contents or substance.

In answer to the sixth interrogatory, he saith: The letter was received in the spring of 1853; at what particular date I cannot say.

Examination adjourned to April 6th, 1861.

April 6th, 1861.—Examination resumed.

In answer to the seventh interrogatory, he saith: I had been for several years previous to 1848, occasionally employed by Gen. James to write for him. I was steadily in his employ up to, I think, the latter part of 1852 or 1853, having been otherwise employed afterwards, as already stated. I did not consider myself in his employ, though I continued to do his writing, or at least much of it, until some time subsequent to the expiration of his senatorial term. He was frequently in the habit of conversing with me on his business affairs. I drew his contracts; penned all, or nearly all, his business letters, and wrote the answers to those he received, except for two or three years of the latter part of the time, when those of a financial character were usually referred to my son, Lyman B. Frieze. I have no recollection of having heard Gen. James make any complaint about the settlement between his assignee and the Atlantic DeLaine Company, after the reception of the letter referred to. He may have done so, but I think he never did to me.

JAMES KNEW OF THE SETTLEMENT AND MADE NO OBJECTION TO IT.

In view of this testimony it is a very mild statement to say that he knew of the proposed settlement. It is perfectly plain that he did not mean to let his assignee or the defendant corporation know that he had any objection to it. It is very doubtful if he then had any objection; if he had he confined its *expression* to his son-in-law, Fiske, and to his HIS witness Parkhurst, and so furnishes the only *act* or *omission* during the whole transaction to which the charge of concealment or deception can attach.

HE HAD AMPLE OPPORTUNITY TO OBJECT. Allusion has been made to his duties as Senator. These, however arduous, ended on the 4th of March. Before that, and "while the matter was pending, (Frieze dep." in 14, Rec. p. 146;) he had notice of it. The agreement was not made until the 2d March, (see date of release Rec. p. 18), and was not executed by exchange of papers until 11th March (see acknowledgment of release, Rec., p. 18). See also deposition of George W. Chapin, Rec. 161, Int. 23. "The papers between the company and TRUSTEE and the assig-

nee of Gen. James were signed March 5th (should be 2d), and placed in the hands of George B. Holmes until the individual releases of the stockholders were obtained. These did not come to hand until after the 10th of March, after which the papers above mentioned were exchanged."

Any time before the 11th of March, Gen. James could have made protest to his assignee, forbidden his friend George B. Holmes to deliver the release, notified the defendant corporation that he would not assent to the settlement—MIGHT HAVE FILED THIS BILL TO ARREST THE SETTLEMENT AND SET IT ASIDE.

He had all the information then which he ever had, and it was his duty then to ACT, or "forever after hold his peace." He did not do so, and the reason is obvious. Upon the slightest hint of dissatisfaction with the settlement which the assignee and friends of Gen. James had urged, and to which they had reluctantly assented, the corporation would have withdrawn their assent, and the trustee, under the mortgage, would have obtained a dissolution of the injunction and proceeded with the sale.

But he choose to wait six years less one day, and without allegation or proof of any discovered facts of which he was not aware at the date of the settlement he exhibits this bill.

WHEN THE SETTLEMENT WAS MADE THE STOCK WAS KNOWN TO BE OF SMALL VALUE. WHEN THE BILL WAS FILED, IT WAS BELIEVED BY GENERAL JAMES TO BE VALUABLE. DURING THESE SIX YEARS THE BUSINESS OF THE COMPANY HAD BEEN CONDUCTED UPON THE CREDIT OF, AND AT THE RISK OF THE RESPONDENTS, WITHOUT ANY AID FROM GENERAL JAMES, AND WITHOUT ANY LIABILITY ON HIS PART.

THE STATEMENT WAS CORRECT.

The bill alleges that incorrect and untrue accounts were presented with intent to deceive, and which did deceive, &c.

See Rec. pp. 5–6.

The answer denies this, and avers that the accounts presented were correct, and denies that Frieze was deceived thereby.

See. Rec. p. 25.

The answer of Frieze substantially denies the allegation.

Rec. p. 115.

Evidence was taken, and the case came on for hearing Nov. 7, A. D. 1861.

At this hearing, *this account was not technically before the court.* It was only in the case as an exhibit to the deposition of George W. Chapin, and this deposition was stricken out by the order of the court made before the hearing.

See Rec. p. 133.

The court, in its opinion delivered at the June Term, A. D. 1873 (June 19), understood us as claiming that this account was not before the court at the hearing Nov. 7, A. D. 1866, upon which the decretal order was made, Nov. 7, 1867. At that hearing the deposition of Chapin was before the court as to all matters not personally transacted with Charles T. James.

See Rec. p. 480.

The only evidence relating to this or any account or statement, presented to and considered by the assignee at the time of the settlement is found in the deposition of W. H. PARKHURST, and it is an answer to In. 20, 21, 22.

See Rec. pp. 36–7–8.

DEPOSITION OF W. H. PARKHURST.

"In answer to the twentieth interrogatory, he saith: Mr. Frieze informed me that he had called on Mr. Chapin, personally, for a statement of the condition and affairs of the Atlantic DeLaine Company, in order that the interest he held as assignee might be protected at the sale then advertised, and

that he might know what the stock was actually worth. There were rumors that the company intended to buy in the stock for about the amount of the claim, or for a nominal sum. His personal application did not bring the statement. Soon after a formal demand was made in writing, addressed to Mr. Chapin, as treasurer of the DeLaine Company. This was sent him by Mr. Bourn, who was then clerk in the office, and by him delivered to the said Chapin, or at his office. But a short time elapsed before Mr. Chapin came into our office. I was in the office with Mr. Frieze when he came in. Addressing himself to Mr. Frieze, after some general conversation, he said, in effect, I have your note asking for a statement of the affairs of the DeLaine Company. To this Frieze says, "Yes, I want a statement." Mr. Chapin said, "I don't know that I can give you anything that will be satisfactory," or something to that effect; that it would be a great deal of trouble to make out one; that they had a large quantity of goods on hand, the price of which was fluctuating, and therefore they could not fix the amount so they could make a statement up; some of the accounts were so tangled up, or mixed up, they being not definitely settled, that he hardly knew how they could get at it. After Chapin left the office he returned and asked Mr. Frieze if he wished a written reply, to which Frieze said that he did not know that a written reply was neceesary. "You say you can't make a statement, and I suppose we must let it stand so." After Chapin's departure I was requested to note particularly what he had said at the interview. Subsequently Mr. Frieze handed me a paper, and said, this is Mr. Chapin's statement; I have just got it. This paper was in the handwriting of Mr. Chapin, and consisted of a few general items, on a piece of paper about the size of a half-letter sheet. I think there might have been about half a dozen lines on each side of the statement, although my impression is there were not as many. No details were specified as to the cost of the property; nor anything that we could take as a basis for the affairs of the corporation with any accuracy. As near as I can now recollect, this paper showed the company largely in debt, to the amount of some four or five hundred thousand dollars; and to balance the account was a large item of sundries, to the

amount of some seventy-five or eighty thousand dollars. But what those sundries were did not appear. This paper, I distinctly recollect, had the appearance of having been copied by copying-press.

In answer to the twenty-first interrogatory, he saith: I did have the statement in my possession for some time, and I did show it to Mr. George B. Holmes, and I think Mr. Fisk also saw it. Mr. Holmes said: "Let us see, Parkhurst, about that statement. What do you think of it?" I said, "I do not know what to think of it. What is your opinion, Mr. Holmes?" Said he, "This is the lamest thing, or the blindest thing, that I have ever seen. It is a regular two-faced thing; for by this paper this company have either lost eighty thousand dollars, or they have made double that sum. Look at it in any way, and I can't see it any different" As to what Mr. Holmes said, and so far as I could understand it, I think it was true. How nearly correct it was I have no means of judging.

In answer to the twenty-second interrogatory, he saith: While the statement was in my possession I was called upon by George W. Monroe, who was then a clerk in the employ of Mr. Chapin. He came into the office and enquired for Mr. Frieze. I said, "He is not in. Is there anything I can do for you?" He said, "Mr. Chapin gave him a paper a day or two since, and he wants it." I asked him what kind of a paper it was. He said, "A statement, or something of that kind. Do you know about it?" I said, "Yes." "Do you know where it is?" asked Mr. Monroe. I replied that it was in my possession. "What does Mr. Chapin want of it?" The reply was, "Mr. Chapin wanted to correct some errors there is in it." My reply was, "Mr. Chapin has a copy of it; if he has made any errors let him make out a correct one, and we will see how the two compare. This one I cannot give up; my orders are to keep it, and give it up to no one." The time was, I think, in the month of February, 1853; before the sale of the house of Mr. James.

In answer to the twenty-third interrogatory, he saith: No other statement was ever made of the condition of affairs of the DeLaine Co. to my knowledge. I had the statement for some time and then gave it to Mr. Frieze, who said he would give it

to Mr. Chapin when he settled his account, as he seemed very anxious about it. I think Mr. Chapin sent two or three times afterwards for it. I am quite sure I was called upon for it more than once, and Mr. Chapin called for it himself.

It is obvious upon reading this testimony, that it amounts to nothing as a basis for the action of the court, even if it were entitled to full credence. But the credibility of the witness is impaired (1) by his relations to the parties, (2) by the temper which he exhibits, (3) by his willingness to swear to what he knows by hearsay *only*. And he is distinctly contradicted by three witnesses as to the material parts of his testimony.

See deposition of Holmes—Rec. pp. 79, 133.
See deposition of Munro, In. 4—Rec. p. 104.
See deposition of Frieze—Rec. pp. 148, 149. In. 22, 23, 24, 25, and p. 151, Exhibit B.

Geo. W. Chapin (see dep., In. 29, Rec. p. 163), explains:

(1.) When application was made for the statement.

(2.) Why it was made.

(3.) What became of it, and how perverse and untrue is the coloring given to the transaction by Parkhurst. THIS COULD NOT HAVE BEEN BY ACCIDENT.

The case was held for advisement, and the law having been changed enabling parties to be witnesses, the case was reopened for further testimony at the June Term, A. D. 1862.

THE ORIGINAL COMPLAINANT WAS THEN LIVING. HE DIED IN THE MONTH OF OCTOBER, A. D. 1862.

The bill having been revived, and the testimony taken, came on for hearing at the November Term, A. D. 1866.

TESTIMONY OF GEO. W. CHAPIN.

At this hearing the testimony of Chapin was before the court and explains the circumstances under which the statement was presented, and distinctly swears that it was correct and true, as follows:

14th ques. State whether or not, to your knowledge, the said Atlantic DeLaine Co. ever neglected and refused to ren-

der any statement of their accounts with the said James, or with his assignee, the said Frieze?

Ans. The statements of the accounts of the company with James for building the mill, and with Frieze for advances made him, or any other accounts with either of them, were never refused at any time.

15th ques. State whether or not the said James or his said assignee ever requested to be furnished with such accounts, to your knowledge or recollection?

Ans. James never requested any such accounts. Mr. Frieze did, and they were furnished him.

16th ques. State whether or not the said James and his said assignee had at all times full means of knowing the state of such accounts.

Ans. They had free access to the books at all times, and could at any time know the true state of their accounts.

17th ques. State whether or not the said James or his assignee ever, to your knowledge, complained that they had not or could not obtain a knowledge of the state of such accounts.

Ans. They never, to my knowledge, complained that they either had not or could not obtain a knowledge of their accounts.

18th ques. State if you know anything in relation to an offer by friends of the said James to advance a sufficient sum for the payment of his debts, provided they could receive his, the said James', interest in the property of the said Atlantic DeLaine Co. State all you know in relation to that subject, if anything.

Ans. I know nothing in relation to any such offer, and never heard that any such was made until this suit was commenced.

19th ques. State whether or not the said James ever called upon you in company with such persons, or with any person or persons, and requested a statement of the account of said company with the said James and with his estate. If so, state when, with whom, and what, if anything, was said and done; and especially state whether then or at any time such statement was refused by you. State fully and particularly your recollection upon this subject.

Ans. He never called upon me with any person or persons and requested a statement of the affairs of the company or of

their accounts, or accounts of the company with him or his estate, nor did he alone ever ask for such accounts, or express any curiosity to know the condition of said accounts. No such statement was ever refused him by me, or by any one, to my knowledge.

20th ques. State under what circumstances you advertised said mortgaged property for sale, as is alleged in said bill. State whether or not the same was made in violation of any understanding, agreement or assurance, and especially state whether, to your knowledge, at the time any claim or pretense was made that such advertisement was in violation of any such understanding, agreement, or assurance. State fully and particularly all that passed between yourself and the said James or his assignee in relation to such advertisement.

Ans. On the 14th of September, 1852, I notified Mr. Frieze that unless an arrangement was made by which the parties for whom I acted should receive their money, I should proceed to sell under the mortgages. I had some inverviews with Mr. Frieze and Gen. James. Gen. James strongly opposed the same, urging a good many reasons why it should not be made, and stated that if it was attempted he should get an injunction. After a consultation with the parties interested, I delayed the advertisement of the property for sale until the February following. When it was advertised an injunction was prayed for, as stated iu said bill. The advertisement was made in accordance with the power contained in the mortgages, and was not in violation of any assurance, understanding, or agreement whatever. Nor did Gen. James, or his assignee, at the time of the advertisement, or at any other time, pretend that the sale was in violation of any understanding, assurance, or agreement. Nor did I ever hear from any source of any such assurance, understanding, or agreement, until after the filing of the bill. Some days after I advertised the property for sale, Mr. N. F. Potter called on me, and after some conversation, tendered me a sum of money, aad requested me to transfer to him the mortgages I held. I offered to receive the money and cancel the mortgages, but by advice of counsel declined to transfer them to him.

21st ques. State whether or not you ever rendered any statement to said Lyman B. Frieze, assignee of said James, which you represented or pretended was a proper statement of the accounts of the said Atlantic DeLaine Co. with the said

James, and of the affa'rs of said Atlantic DeLaine Co. If so, and the same were in writing, please produce and annex the same, or a copy thereof. When was the same rendered, where and to whom, and at whose request, and under what representations? State whether the same were preceded by any verbal communications by you to the said Frieze or the said James. If so, state when and where the same were made, and give the substance of the same to the best of your recollection.

Ans. On the 15th of February, 1853, I received from Mr. Frieze, assignee of Gen. James, a letter, of which a copy is annexed, marked "H." I afterwards saw Mr. Frieze at my office, and gave him verbally a statement of the condition of the company—of its liabilities and assets—with which verbal statement I understood him to express himself satisfied. I supposed that nothing more was necessary. When an injunction was granted upon the allegation of said Frieze that he had been unable to obtain the accounts which he desired, I rendered him a statement showing the condition of the company January 1, 1853, a copy of which is annexed, marked "I." This statement was taken to Mr. Frieze by my clerk, George W. Munroe, in a sealed envelope, with a letter to Mr. Frieze, a copy of which is annexed, marked "J." I did not render any statement of the account of the company with Gen. James, as none was requested, they having been furnished some time previously.

22d ques. State whether the said statements were ever withheld by you from said Frieze or said James when requested, or, to your knowledge, desired; state whether the same, when rendered, were incorrect and untrue; please explain fully and particularly all the circumstances under which said accounts were rendered?

Ans. Such statements were never withheld by me from either Frieze or James when requested or desired; when rendered, they were both correct and true; I have explained the circumstances in answer to interrogatory 21.

23d ques. State all the circumstances under which the mutual releases between said Atlantic DeLaine Co. and the said Frieze, mentioned in said bill, were made; state who first suggested the same, and when and where; state what was done in pursuance of such suggestions, and state fully and particularly all that was said and done in relation to the same by yourself or the said Frieze?

Ans. Some days after I had furnished to Mr. Frieze the statements referred to in my answer to the 21st interrogatory, Mr. George B. Holmes called at my office, to wit, on the 28th of February, 1853, and my impression is he said he came as a friend of Frieze and James; he inquired if an adjustment between us and Gen. James and his assignee might not be made without further litigation; this was the commencement of negotiations for a settlement; after communicating this proposition to the stockholders, these negotiations were continued for several days, and resulted in mutual releases between the parties; I cannot tell who first proposed this mode of settlement, but my impression is that the proposition was made by the parties representing Gen. James; Mr. Hoyt was in Providence, and took part in the negotiations; the papers between the company and trustee, and the assignee of James, were signed March 5, 1853, and placed in the hands of Mr. George B. Holmes until the individual releases of the stockholders were obtained; these did not come to hand until after the 10th of March, after which the papers above mentioned were exchanged; the company made the settlement agreed upon with great reluctance, feeling that they were receiving scarcely any value for the large amount of money loaned; nothing but the fact that there was no possibility of obtaining anything more from James or the assignee led them to make it; when the $75,000 loan was made to James, the parties supposed they received securities to the value of at least $100,000, independent of his interest in the DeLaine Co.; and as late as June, 1852, at which time some negotiations took place between them and James, said parties were confident that the trustee had sufficient property in his hands to pay off the loan, without foreclosing the mortgage on James' interest in the company. At that time, June, 1852, none of the property had been sold but the stock on the Warwick farm, realizing about $1,300; the mortgage on the homestead was valued at $20,000, but realized only $9,800.50; the mortgage on the Warwick farm was valued at $10,000; it only realized $5,786.79; the mortgage on the Scituate farm was valued at $3,000; nothing was realized from it; the $50,000 Cannelton notes were valued at par; we obtained only $21,000 for them; these notes were secured by a

mortgage on the Cannelton mill in Indiana, which James had built for the Cannelton Co.; he received in part payment therefor their acceptances of his drafts; these mortgage notes were put into his hands by the company for negotiation, the proceeds to be applied to the payment of said acceptances of his drafts; in violation of his trust he pledged said $50,000 of notes to me, as trustee, in part security for the $75,000 loan; his drafts on the Cannelton Co., which he had negotiated with various parties, went to protest, the company having failed; the diffent holders of these drafts claimed of me said mortgage notes as their property, on account of the agreement made by James with Cannelton Co.; to avoid litigation I was obliged to compromise with them for $21,000; the 1,000 shares East Tennessee Mining and Manufacturing Co., valued by James at $25,000, we never received anything for; I annex copies of papers executed at the time of settlement; they are the papers marked "K, L, M, and N."

24th ques. State whether or not, to your knowledge, the said settlement and releases were executed with the knowledge or assent of said James. State fully all that you know upon this subject?

Ans. I did not know whether said James was aware of said settlement or not. Afterwards I understood from Mr. Frieze that he, James, approved of it. I did not consider it of any importance whether he approved of it or not, as he, Frieze, had full power to settle with us.

25th ques. State whether or not said statements of said affairs of said DeLaine Co. were made with the intent to deceive and defraud the said Frieze; and state fully for what purpose the same were made?

Ans. The statements of the affairs of the company were not made with any intention to deceive or defraud the said Frieze. I was always ready and willing to give him any information that he desired about the affairs of the company. He may have called, though I have no recollection that he did so, when a written statement could not be furnished immediately, on account of the books not being made up. When he called for information, I gave him, as before stated, verbally, all the information that I supposed he wanted. When the injunction

was granted, I sent him a statement in writing, in substance and form the same I was accustomed to send annually to the directors. He made no complaint, and called for no further account. He could have had any explanation that he desired at any time.

26th ques. State whether the attempt to foreclose the said mortgage upon said stock by sale thereof, or any of the acts of the said Atlantic DeLaine Co., or of yourself, or any of the officers of said company, in relation to said stock, or the sale thereof, was, to your knowledge, with the intent on your part, or on the part of the said defendant corporation, or its officers, or any of them, of deterring purchasers from bidding at said sale, or to obtain said stock at less than its fair value. State fully and particularly, to your knowledge, all the circumstances attending the attempt to sell said stock, and the reason for such attempt, so far as they are known to you?

Ans. Neither the attempt to foreclose the mortgage, or any act of the company or myself, or any of the officers or members of the company, in relation to the said mortgage and said stock, were with any intent to prevent any one from bidding at said sale, or with the object of obtaining the stock below its fair value. On the contrary, it was the desire of all that some one outside the company would purchase, as we were greatly in need of the funds, and proposed to make the sale to realize the amount due us, as far as the property would go.

See Rec. pp. 159–161.

TESTIMONY OF LYMAN B. FRIEZE.

The testimy of Lyman B. Frieze is substantially to the same effect as follows:

6th ques. State whether or not you ever called, as assignee of said James, upon George W. Chapin, treasurer of the Atlantic De Laine Co., for settlement of the condition of said company. If you say that you did, state when, for what purpose, in what manner—whether verbally or in writing. State fully all that was said and done by said Chapin and yourself in relation to the same?

Ans. I did call on Mr. Chapin for a statement, but cannot recollect at what time; I think it was before the bill for an in-

unction was filed; I wished to obtain it for the purpose of ascertaining the condition of the company; I do not recollect anything that was said between Mr. Chapin and myself on the occasion; I merely recollect the fact of having called on him.

7th ques. State what was your purpose in filing the bill of complaint and for an injunction mentioned in this bill. State whether or not you were desirous of effecting a settlement with said Atlantic DeLaine Co. and with said George W. Chapin; and if you state that you were, state why. Give the facts and circumstances which made such a settlement desirable, fully and particularly?

Ans. My purposes were for the objects stated in the bill which I filed; I did wish for a settlement of the business between the Atlantic DeLaine Co.—the trustee and myself as assignee—and I thought it for the interest of all parties to have the business closed up.

8th ques. After said bill was filed, state whether or not a written statement of the condition of said company was furnished to you? and if so, by whom?

Ans. After the bill was filed, a written statement of the standing of the company was rendered by Mr. Chapin.

9th ques. State whether or not you had any difficulty in understanding said statement, whether you have ever discovered any errors in it, and whether you were deceived or misled by it?

Ans. I understood the statement very clearly, but objected to it on account of its not going into details sufficiently. At that time I wanted an exact account of the stock in the mill. I have no recollection of having found any errors in the statement, and do not think it deceived me.

10th ques. State whether the said George W. Chapin ever withheld, or showed any disposition to withhold, from you as assignee of said James any statement of the condition of the Atlantic DeLaine Co., or of their accounts, or his own account as trustee with said James or yourself, as assignee?

Ans. I do not think that Mr. Chapin showed any disposition to withhold an account, but I have called upon him for a statement at a time when he was unable to give it.

11th ques. State whether or not any information which you desired about your own accounts or those of Charles T. James was furnished to you by said Chapin when called for.

Ans. I have called on him at some times for accounts when he was unable to give them; but, as far as my recollection goes, he always furnished them subsequently.

12th ques. State whether or not you proposed, through any person, to negotiate for a settlement between yourself, as assignee, and the said Atlantic DeLaine Co. and said Chapin. If so, through whom was said proposition made?

Ans. I think I made no proposition to the DeLaine Co. in the commencement of the negotiations for a settlement. Mr. George B. Holmes acted for me in the final adjustment of matters.

13th ques. State whether such negotiations were had, how long they continued, with what friends of Gen. James, if any, you consulted about the same; whether, while such negotiations were pending, you knew the condition of the Atlantic DeLaine Co., of the assigned estate in your hands, and the state of the accounts between yourself and the said Atlantic DeLaine Co. and said Chapin; did such negotiations result in a settlement? and if you say that they did, state the fact which induced you to make said settlement.

Ans. Negotiations were had which continued for several days, and resulted in a settlement in the early part of March, 1853, when mutual releases were executed and placed in the hands of George B. Holmes until the individual releases of each member of the company could be obtained; I think Mr. Holmes, Nathaniel F. Potter, and Henry W. Gardner, who were then all friends of Gen. James, were consulted about the matter; I did know of the condition of the DeLaine Co. from their statements, and from the general condition of business at that time; I knew what was the condition of the assigned estate, and of the accounts between myself and said Chapin and the company from my own book and from their accounts; I made the settlement on the ground that we thought it was the best that could be done for the estate. Rec. pp. 143–9.

THERE WAS NO EVIDENCE BEFORE THE COURT WHICH TENDED TO SHOW THAT THIS WAS NOT A CORRECT STATEMENT OF THE CONDI-

TION OF THE COMPANY. NOTHING BUT AN INGENIOUS ARGUMENT OF THE VERY LEARNED AND ABLE COUNSEL FOR THE COMPLAINANT, THAT IT MUST BE INCORRECT, AND A MOST EARNEST PLEA FOR AN ACCOUNT.

To this argument and plea, the court yielded assent, and at the November Term, A. D. 1867, made the decretal order, sending the case to the master for an account.

See Rec. p. 212.

AT THE HEARING BEFORE THE MASTER, IT APPEARED BY THE TESTIMONY OF AN EXPERT SELECTED BY THE COMPLAINANT TO EXAMINE THE BOOKS OF THE DEFENDANT CORPORATION, THAT THIS ACCOUNT WAS A LITERALLY CORRECT STATEMENT OF THE AFFAIRS OF THE COMPANY.

See testimony of Balch, Rec. 311.

Report of master, Rec. 361.

CASE OPENED FOR FURTHER TESTIMONY.

Whereupon the case was opened for further testimony upon the question, whether the statement of the accounts furnished by the treasurer of the corporation to the assignee, was or was not false, as found by the court.

See Rec. p. 387.

TESTIMONY OF GEORGE W. CHAPIN.

Under this order the respondents took the testimony of George W. Chapin, who swore to the entire accuracy of the statement.

See Rec. p. 348 *et seq.*

This witness was cross-examined at great length.

(Respondents file a paper that is marked by the examiner, "Exhibit A. F. A. D., examiner."

Interrogatory 1. Please examine the paper presented to you, marked "A," and state what it purports to be.

Answer. It is a press-copy of a statement of the condition of the Atlantic DeLaine Company, January 1, 1853, the original

of which was sent to Lyman B. Frieze by me, February 26, 1853.

Int. 2. Were you at that time treasurer of the Atlantic De-Laine Company?

A. I was.

Int. 3. Have you examined the books of the company? and, if so, please state whether the paper marked "A" contains a correct and true statement of the condition of the company at its date; and, if not state in what respect it differs from the books and accounts of the company.

(Objected to as leading, and also generally.)

Int. 4. Please state what was the amount of the bills-payable of the Atlantic De Laine Company on the first of January, 1853.

A. $410,615.39.

Int. 5. What was the amount due agents for advances on goods at that date?

A. $90,026.19.

Int. 6. What was the amount due various persons on account?

A. $51,404.44.

Int. 7. What was the amount of the capital stock of the Company at that date?

A. $237,495.53.

Int. 8. What was the aggregate amount of these items at that date?

A. $789,541.55.

Int. 9. What was the amount of the cash and bills-receivable of the Company, on hand at that date?

A. $13,584.92.

Int. 10. What was the cost of the real estate, cassimere department, and amount paid Charles T. James, contract account?

(Objected to as leading, and also generally.)

A. $310,006,04.

Int. 11. What was the amount due the company at that date from Lyman B. Frieze, assignee?

A. $53,314.77.

Int. 12. What was the amount due the company at that date from sundry persons?

A. $2,061.38.

Int. 13. What was the amount, in value, of wool, cotton, and supplies, at mills at that date?

A. $190,692.17.

Int. 14. What was the amount, in value, of the delaines and cassimeres on hand at that date?

A. $149,516.71.

Int. 15. What was the difference in amount between the debts and liabilities and the assets of the company at that date?

A. $70,365.53.

Int. 16. From what sources do you obtain the information which enables you to answer the questions to these items?

A. From the books and accounts of the company.

Int. 17. By whom was the statement on paper marked "A," made up?

A. By myself.

Int. 18. From the books and accounts of the company?

A. Yes sir.

Int. 19. Is it a correct statement of the condition of the company taken from the books and accounts at that time?

A. It is.

Int 20. Was the original, of which this paper, marked "A," is a copy, sent to Lyman B. Frieze, assignee of General James, on or about the 26th day of February, 1853?

A. It was.

Int. 21. Have you examined the list of notes in exhibit V in the original record annexed to the deposition of George W. Chapin, pages 300, 301 and 302, and the memorandum at the end of that list on page 302, to wit: "The notes given Hoyt & Tillinghast, Hacker, Lea & Co., Dodge, Tucker & Co., are for collateral for their acceptances of their drafts loaned to us," and will you explain these transactions as they appear from the entries upon the books and accounts of the company, and as they were to your personal knowledge?

A. I have examined the list and memorandum referred to, and also the books and accounts of the company. The com-

pany from time to time borrowed the acceptances of their drafts from Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., for which acceptances they gave their notes of same date and amount. The company paid these notes at maturity, and the acceptors paid the drafts. These transactions were independent of drafts drawn and accepted for advances on goods shipped to said parties, as appears by the books, and said drafts and notes do not appear on the accounts current which were rendered to the company by Hoyt, Tillinghast and Hacker, Lea & Co. On the account current of Dodge, Tucker & Co. such drafts are charged to the company, and such notes are credited to the company, one offsetting the other.

Int. 22. Have you examined the paper, heretofore shown you, marked "A," and compared the same with the books and accounts of the company? If so, state whether the item "Due agents for advances on goods, $90,026.19," includes any of the notes given as collateral for drafts?

A. I have compared said statement with the books and accounts of the company,, and said item does not include any of the notes given as collateral for drafts.

Int. 23. Have you examined the statement marked "A" and compared it with the books and accounts of the company? and, if so, state whether the item "Delaines and cassimeres on hand, $149,516.72," includes the goods unsold in the hands of commission-merchants or not?

A. I have done so. Said item includes the delaines and cassimeres in the hands of agents.

Int. 24. Have you examined the books and accounts of the company? and, if so, please state whether or not they show for what the bills payable to Hill, Carpenter & Co., outstanding December 31st, 1852, were given. If so, state what they were given for?

A. I have examined the books and accounts of the company which show for what said notes were given, and find that all the said notes to Hill, Carpenter & Co. were given for wool, excepting two which were given early in November to Hill, Carpenter & Co., who discounted the same and paid the company the proceeds thereof.

Int. 25. State whether you examined the books and accounts of the company; and, if so, state whether these notes to Hill, Carpenter & Co., outstanding December 31st, 1852, or any of them, are included in the statement heretofore shown to you marked "A," in the item, "Due various persons on account $51,404.44;" and, if so, which of such notes are so included?

A. I have examined said books and accounts for the purpose, and find that none of said notes are included in said item.

Int. 26. Assuming the statement heretofore shown to you and marked "A" to be a correct statement of the condition of the Atlantic DeLaine Company on the first day of January, 1853, state what, according to said statement, was the value per share of the capital stock of the company at that time?

A. It was worth about seventy per cent., according to said statement.

See Rec. pp. 388–390.

TESTIMONY OF SAMUEL C. BLODGET.

Also of Samuel C. Blodget, an experienced book-keeper, and formerly book-keeper for the defendant corporation, who testified to the correctness of the statement as follows:

SAMUEL C. BLODGET, of the city and county of Providence, in the State of Rhode Island, having been duly sworn according to law, testifies and says as follows:

Direct examination by Mr, Payne:

Int. 1. What is your present occupation?

A. I am treasurer of the Providence Institution for Savings.

Int. 2. About how long have you held that place?

A. I have been in the Institution for twenty-five or six years.

Int. 3. Have you ever been a book-keeper?

A. Yes, sir.

Int. 4. Have you at any time kept the books of the Atlantic DeLaine Company?

A. I have, sir.

Int. 5. Have you examined the books and accounts of that company, with a view to ascertain its condition, on the 31st of December, 1852, or the 1st of January, 1853?

A. Yes, sir.

Int. 6. State what, at that date, was the amount of the bills payable of the company?

A. $410,615.39.

Int. 7. What was the "amount due agents for advances on goods?"

A. $90,026.19.

Int. 8. What was the "amount due various persons on account?"

A. $51,404.44.

Int. 9. What was the amount of the capital stock of the company?

A. $237,495.53.

Int. 10. What is the whole amount of these items?

A. $789,541.55.

Int. 11. What was the amount of cash and bills receivable on hand?

A. $13,584.92.

Int. 12. What was the cost of the real estate, cassimere department, and amount Charles T. James's contract account?

A. $310,006.04.

Int. 13. The amount due from Frieze, assignee?

A. $53,314.77.

Int. 14. What was the amount due from sundry persons?

A. $2,061.38.

Int. 15. What was the amount of wool, cotton, and supplies at the mill?

A. $190,692.17.

Int. 16. What was the amount of delaines and cassimeres on hand?

A. $149,516.74.

Int. 17. What is the difference between the debit and credit sides of the account?

A. $70,365.53.

Int. 18. Have you examined the list of notes in Exhibit V in the original records annexed to the deposition of George W. Chapin, pages 300, 301, and 302, and the memorandum at the end of that list, on page 302: "The notes given Hoyt, Tillinghast & Company, Hacker, Lea & Company, and Dodge, Tucker

and Company, are for collateral of their acceptances of our drafts loaned us?" If so, please explain these transactions as they appear on the books of the company?

A. I have examined that list of notes and the memorandum at the end of that list. It was within my knowledge, at that time, that the company from time to time borrowed the acceptances of their drafts on and of Hoyt & Tillinghast, Hacker, Lea & Company, and Dodge, Tucker & Company, and gave their notes of same date and amount as collateral for these acceptances. The notes were paid by the company and the drafts by the acceptors. These transactions were entirely independent of drafts drawn and accepted for advances on goods shipped to said parties. Furthermore, these borrowed acceptances and collateral notes do not appear in the accounts-current which Hoyt & Tillinghast, or Hacker, Lea & Company, rendered the company; but in the accounts rendered by Dodge, Tucker & Company, the acceptances are charged and the notes are credited, one offsetting the other, all of which transactions are fully explained in the books and accounts of the company.

Int. 19. Please state whether the items "Due agents for advances on goods, $90,026.19," includes any of the notes given as collateral for drafts?

A. I have examined and compared the statement marked "A," annexed to Mr. Chapin's deposition, with the books of the company, and the item "Due agents for advances on goods, $90,026.19," does not include any of the notes given as collateral for drafts. Every draft drawn and every collateral note given was duly credited and charged to the parties on whom they were drawn, and to whom they were given. If this were not strictly correct, then the item "Due agents for advances on goods" would have been increased exactly by as much more as the amount of the notes that were given.

Int. 20. Taking the condition of the company to be as you have stated it on the 31st of December, 1852, what was the value per share of the capital stock?

A. The value of the capital stock would be $237,495.53, less $70,365.53; or about, I should say, $700 a share—a fraction over that.

Int. 21. Please annex to your deposition the paper from which you have given these items?

A. I will and do.

(The paper is filed and marked "Exhibit F. F. A. D., examiner.")

Int. 22. State whether the item, "Delaines and cassimeres on hand, viz., $149,516.74," does or does not include the goods unsold, in the hands of agents?

A. I have examined and compared the statement marked "F" with the books and accounts of the company, and find that the item "De laines and cassimeres on hand, $149,516.74," includes all the goods on hand and unsold in the hands of agents and at the mill; the amount at the mill being only $298.04.

Int. 23. Have you examined the books of the company; and, if so, state whether or not they show for what the bills payable to Hill, Carpenter & Co., outstanding December 31, 1852, were given? If so, state what they were given for?

A. I have examined the books with reference to the bills payable to Hill, Carpenter & Co., outstanding Dec. 31, 1852, and find they were all given for wool, and so stated on the books with this exception; the two notes of November 3d and 7th, 1852, six months, for $5,000 each, were discounted November 24th, through Hill, Carpenter & Co., and the proceeds were received by the company.

Int. 24. Are these notes, or any of them, included in the item, "Due various persons on account $51,404.44," upon the statement marked "F," annexed to your deposition?

A. I examined the books with reference to this item, and find that there are no notes of any amount or description included in that item.

See Record, pp. 412–414.

TESTIMONY OF JOHN R. BALCH.

Also the deposition of John R. Balch, the expert selected by the complainant, whose testimony was given before the master. He testified to the correctness of the statement, as follows:

Int. 1. What is your present occupation?

A. Treasurer of the Providence & Worcester Railroad.

Int. 2. Have you been a book-keeper at any time?

A. Yes, sir; that has been my main business.

Int. 3. Have you heretofore, as an accountant, made an examination of the books of the Atlantic DeLaine Company, and given your testimony in relation to the same before the master in this case?

A. I have.

Int. 4. Please examine the statement herewith presented to you marked "F," and state whether or not you have compared it with the books and accounts of the Atlantic DeLaine Company, and state whether, according to the books and accounts it is a statement of the condition of the company of the 31st of day of December, 1852, and whether it is a correct and true statement; and, if not, in what does it differ from the books and accounts?

A. I have compared said statement with the books and accounts of the company, and find it a true and correct statement.

Int. 5. Have you examined the list of notes in Exhibit V. in the original record annexed to the deposition of George W. Chapin, pages 300, 301 and 302, and the memorandum at the end of that list, on page 302, to wit: "The notes given Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., are for collateral of their acceptance of our drafts loaned to us?" and explain these transactions as they appear from entries on the books and accounts of the company?

A. I find, on examining the books, that the company were in the habit of drawing accommodation drafts on said parties from time to time, and giving their notes of same dates and amounts as collateral for said drafts. The drafts were credited on the books, and the notes were charged on the books to said parties; thus balancing the account. The books also show that the company paid to Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co., all the notes mentioned on said pages 300, 301 and 302 as due said parties, the payment in each case being a cash payment.

Int. 6. Examine the statement marked "F," and state if you have compared the same with the books and accounts, and

state whether the item "Due agents for advances on goods, $90,026,19," includes any of the notes given as collateral for drafts.

A. I have compared it with the books and accounts, and find said item does not include any of said notes.

Int. 7. Examine the same statement and say if you have compared the same with the books and accounts of the Company, and state whether the item "Delaines and cassimeres on hand, $149,516.72," includes goods unsold in the hands of agents.

A. It does include them.

Int. 8. Have you examined the books of the company, and if so, please state whether or not they show what the bills payable to Hill, Carpenter & Co., outstanding on the 31st of December, 1852, were given for; and if so, for what?

A. I find they were all given for wool, but the two notes under date, November 3d and 2d, of $5,000 each, which were discounted through Hill, Carpenter & Co., who paid the company the proceeds, $9,698.33.

Int. 9. State whether, according to the books, these notes, or any of them, are included in the statement heretofore shown you in the item "Due various persons on account, $51,404.44."

A. They are not.

Int. 10. Assuming the statement marked "F" to be a correct statement of the condition of the company, what, at that time, was the value per share of the capital stock of the company?

A. About seven hundred and five dollars per share, or seventy per cent. of the par value of the shares.

See Rec. pp. 417–418.

THE COURT REFUSED TO REVERSE THE DECREE, BUT IT IS TO BE NOTICED THAT IN THIS SECOND OPINION OF THE COURT, AFTER FULL ARGUMENT UPON ALL THE TESTIMONY NO SPECIFIC ERROR IN THE AMOUNT CLAIMED TO BE CORRECT AND UNTRUE IS POINTED OUT.

This is the language of the court.

"The new evidence convinces the court that the original decision was correct."

In the only evidence to which the court specifically refer the

statement of the witness is evidently misapprehended. George W. Chapin stated that the *original* of the papers marked A, was sent to Mr. Frieze, and was made up from the books and accounts of the company.

See Record, p. 389 In. 17, 18, 19, 20, and p. 388, Int. 1.

Upon cross-examination, he said that this paper, (the press copy of the original which was sent to Mr. Frieze,) came from his private letter book.

See Record, p. 394, In. 25, 26, 27, 28, 29, 30.

An inspection of this paper will show that it is a press copy, and not an orignal, and Mr. Chapin explains why the paper was copied into his private letter-book.

See Record, p. 410. In. 27.

And yet the court say, "the party who furnished it (the statement) to the assignee as the basis of the settlement, confesses under oath *that it was* TRANSCRIBED FROM A PRIVATE MEMORANDUM KEPT BY HIM."

TESTIMONY TO THE CORRECTNESS OF THE STATEMENT BEFORE THE MASTER.

We herewith submit the evidence produced before the master, supporting the correctness of the statement. This evidence was offered by the complainant from an expert selected by her after an examination of the books of the company, assisted by the counsel of the complainant, and no attempt was made to show that the testimony of the expert was incorrect, or that there were any errors in the statement. The Master reported that the statement was correct, and no exception was taken to his report in this respect.

Mr. John R. Balch, Treasurer of the Providence & Worcester Railroad Company, was selected by the complainants as an expert to examine the books and testify in relation to them. His letter of instructions from Mr. Parsons, the complainants' attorney, is on Record, page 254, Exhibit O, and is as follows :

Mr. JOHN R. BALCH :

Dear Sir :—In order that you may have a statement of what the complainant in the suit James *vs.* DeLaine Company, in which you have been appointed bookkeeper and accountant, desires, I write the following in addition to what I said to you a few days ago. On page 6 of the printed pamphlet, called "Motion for instructions to the Master," you will find the motion of February 8, 1868, marked A (see Record, p. 217), certain accounts marked respectively F (Record, pp. 220 to 227), G (Record, pp. 227 to 331), H (Record, pp. 231, 232), and filed in alleged compliance with the said motion A (Record, p. 217). Mrs. James desires you to take the accounts marked F, G, and H, compare them with the books and accounts submitted by the Company and George W. Chapin, under the master's orders, verifying the same, and note if there be any errors or omissions therein. She also desires you to examine the account or paper sworn to by Geo. W. Chapin, November 17, 1868, (see Exhibit L, pp. 234 to 253), of which a corrected printed copy has been handed to you, and so far as any statements, accounts, declarations, etc., contained in the same may appear in the books and accounts of said Company, to verify the same, and note if there be any errors or omissions in the same.

She then requests you to take the motion marked "A," and from the books, papers, and accounts of said company and G. W. Chapin, trustee, you shall make out an account or accounts in response thereto.

She desires you to take said motion and to make a full, detailed, and particular account or series of accounts, if that should be the better course, such as will make your response thereto, such a full, true, detailed and particular statement as can be made from the books and accounts submitted to you by the company and Mr. Chapin. In fact, she wants from you such a full, true, particular, and detailed account in compliance with said order as a bookkeeper and accountant, as can be made up and presented from the books and accounts submitted to you.

These are the general requests made to you now and at this

stage of the case. You can proceed with the suggestions I have made, and I may have occasion to make others, or to ask for more matters pending your investigations, or after they shall have been completed.

Yours, etc.,

(Signed), JAMES H. PARSONS.

On the Record, page 311, is found the report of Mr. Balch's testimony, after making the examination in Exhibit O, and is as follows :

Question. Have you as the accountant and book-keeper appointed in this case, made any examination of the accounts heretofore filed by the Atlantic DeLaine Company and Geo. W. Chapin, in connection with the books of said company, and if so will you state in your own way and in such way as you deem best, what examination you have made, what you have ascertained, and produce any accounts, statements or papers which you have prepared or which have been furnished you.

Answer. Yes, sir ; there is an account marked F, page 11 of the pamphlet marked N (Record, pp. 220 to 227). I have examined that with the books which Mr. Chapin and his clerks furnished me, and I find there is occasionally a little typographical error ; that there are one or two omissions ; but it adds up all right ; I went through the whole of that pamphlet and examined it ; the whole of the accounts appearing in the pamphlet called " Motion for instructions to the master " marked N ; you will perceive those statements in detail correspond exactly with the entries on the book.

Then we come to this other pamphlet, " Lucinda James, Administratrix *vs.* Atlantic DeLaine Company," marked L, being the account filed by the respondents in compliance with the master's order. Where the statements are made on the aggregate, I took the books and examined all the details ; for instance the bills payable. There is a sheet marked 1 (Record, pages 279 and 280) containing every item that goes to make up that sum—$410,615.39, examined by the journal, and also by the bill book.

Nos. 2, 3 and 4 (Record, page 272), due agents for advances on goods, $90,026.19.

Answer at top of Record, page 312.

In accordance with this letter from Mr. Parsons, I took this book, "Motion for instructions," marked N, and gave it a thorough examination with the books that were furnished me by Mr. Chapin, and those are my check marks, the whole of them. I find them all correct with the exception of a few typographical errors, which do not alter the amounts at all. Where I came to the amounts that were stated in the aggregate, I took the books and made a complete list in detail of those amounts. For instance, here are nine documents which go to make up that statement. There is a list of the bills payable, marked 1, $410,615.19. Those are from the journal as well as from the bill books,

Question. (Record, page 312.) Please hand those to the master to be marked and annexed as a part of your examination.

Answer. There is due agents advances on goods, $90,026.19, and here is a list of the parties to whom it is due (Record, page 272); due various persons on account, $51,404.44, and there is a list of the parties copied from the books (Record, p. 272); there is capital stock, and here are the owners of the shares (Record, pages 272 and 273); that is all on the paper marked 2, 3 and 4.

Then on the credit there is cash and bills receivable on hand, $13,584.92, marked "5" (Record, page 273).

There is the real estate, etc., $310,006.04, numbered 6, (Record, page 273); No. 7, wool, cotton and supplies at mill, $190,692.17 (Record, page 273); No. 8, delaines, cassimeres on hand, $149,516.74 (Record, pages 273 and 274); No. 9, balance (Record, page 274); that I asked the book-keeper to state to me; he says it grows out of losses on cassimeres and delaines, estimated losses; but he showed me afterwards the losses exceeded that by several thousand dollars after they were fully sold some months after I satisfied myself it was a proper entry.

There are nine documents referred to as applicable to page 26 (Record, page 231) of the pamphlet marked "Motion for

instructions" Mr. Chapin's book (Exhibit L, Record, pages 234, 253), in compliance with the order of the master, is an exact copy of that account in here word for word, with those nine entries; that statement is also in here, being the paper marked N; this pamphlet is Mr. Chapin's account filed in compliance with the order of the master, marked L (Record, pages 234 to 253); there it is again (Record, page 240); we found three of them; this statement is the same with the one in the other printed one on page 26; they all three agree.

SUMMARY STATEMENT.

Showing from the account in the record produced upon the call of the complainant, ascertained by the master to be correct, and whose finding in this respect was never contested or excepted to; that the statement presented by Chapin to Frieze was a

CORRECT STATEMENT OF THE CONDITION OF THE COMPANY AT THE TIME.

This is the account which was presented. It appeared in several places in the record.

It is annexed to the deposition of George W. Chapin as Exhibit I.

See Rec., pp. 182, 183.

281 *Statement of the Atlantic De Laine Company, January 1st, 1853.*

No. 1.	Bills payable	$410,615.39
" 2.	Due agents for advances on goods	90,026.19
" 3.	Due various persons on account	51,404.44
" 4.	Capital stock	237,495.53
		$789,541.55

Credit.

No. 5.	Cash and bills receivable on hand.....	$13,584 92
" 6.	Cost of real estate, cassimere department, and amount paid Charles T. James's contract-account	310,006 04
" 7.	Due from Lyman B. Frieze, assignee.....	53,314 77
" 8.	Due from sundry persons.....	2,061 38
" 9.	Wool, cotton and supplies at mill.....	190,692 17
" 10.	Delaines, cassimeres, on hand	149,516 74
" 11.	Balance	70,365 53
		$789,541 55

I would state our directors estimate that $50,000, or more, of the above balance accrued from the non-fulfillment of the contract with Charles T. James, which they shall prosecute against him or his assignee.

The above is a true copy from the books.

(Signed) GEO. W. CHAPIN,
Treasurer.

Providence, Feb. 26, 1853.

Below will be found proof of the correctness of each item by reference to the accounts in the record.

No. 1.	Bills payable.	See Exhibit V, Rec., pp. 197, 198..	$410,615 39
" 2.	Due agents for advances on goods.	do. W, do. p. 198	90,026 19
" 3.	Due various persons on account,	do. X, do. p. 198.....	51,404 44
" 4.	Capital stock,	do. Y, do. pp. 198, 199.	237,495 53
			$789,541 55

Credit.

No. 5.	Cash and bills receivable on hand, see Exhibit Y, Rec., pp. 199, 200, viz., cash.....	$5,326 96	
	Bills Receivable.....	8,257 96	
			$13,584 92

No. 6.	Cost of real estate, see Ex. *Z*, Rec., pp. 200, 201	$13,140 60	
" 6.	" cassimere department, see Ex. U, Rec., pp. 193, 194, 195, 196	40,250 33	
" 6.	Charles T. James's contract-account, Ex. B, Rec., pp. 176, 177	256,615 11	
			$310,006 04
" 7.	Due from Lyman B. Frieze, assignee, see Exhibit A, A, Rec., pp. 202, 203, 204, 205		53,314 77
" 8.	Due from sundry persons, see Ex., Rec., p. 201		2,061 38
" 9.	Wool, cotton, and supplies at mill, see Ex. C, Rec., p. 425; and Rec., p. 273	195,508 75	
	Less unpaid bills	4,813 67	
			190,692 19
" 10.	Delaines, cassimeres, on hand, see Exhibit B, Rec., pp. 424, 425; and See Exhibit Z, Rec., p. 201		149,516 74
" 11.	Balance, see Record, p. 274, statement which shows cost of—		
	Cotton ac., see Ex. H, Rec., p. 442.	$3,642 98	
	Cassimeres ac., " H, " p. 442.	12,680 23	
	Delaine ac., " H, " p. 442.	237,062 87	
	Wool ac., " H, " p. 442.	147,823 96	
	Delaine mill ac., " H, " p. 442.	9,364 40	
		$410,574 44	
	And the same valued as above, numbers 9 and 10, viz.:		
	No. 9. Wool, cotton, and supplies at mill	$190,692 17	
	No. 10. Delaines, cassimeres, on hand	149,516 74	
		340,208 91	
	Making a loss, as expressed on the statement above, the "balance" of		70,365 53
			$789,541 55

This statement, of course, shows the "estimated values" of wool, cotton, &c., on hand. That this was not an under estimate, but as appears from the results of manufacture and sales, a very large over-estimate is shown by the uncontradicted testimony in the Record, p. 169, and reprinted in this Brief, p. 72.

NOTE—The item above, "No. 6," Chas. T. James's contract account, $256,615.11, was not balanced December 31, 1852, according to the form in which it is printed on the Record, but is correct, as reference to the Record, pp, 176 and 177, will show, viz:

Items on debit side the account Record, p. 176, to December 31, 1852, amount to	$246,996 84
The item of interest, Record, p. 176	12,732 82
Makes a total debit of	$259,729 66
The amount of the credit side of the account to December 31, 1852, see Record, pp. 176, 177, is	3,115 18
Making a balance of	$256,614 48

It will be seen that there is a difference of 63 cents, which is the result, probably, of a typographical error.

EXPLANATIONS OF PRETENDED ERRORS REFERRED TO IN COMPAINANT'S BRIEF AND ARGUMENT IN THE COURT BELOW.

No evidence having been produced to contradict the evidence produced in support of this statement, and no error in the statement having been specified in the opinion of the court, we have no means of knowing what errors are relied upon, other than the brief and argument of the complainant's counsel in the court below.

In these, certain pretended errors were commented upon, which we will proceed to enumerate and show that they are not errors, and that they do not in any way impair the evidence supporting the correctness of the statement.

PRETENDED ERROR.

Brief, p. 4, c.—The by-laws of the company call for an annual statement of the affairs of the company, to be made by the directors and treasurer, and such a statement was actually made upon the trial balance book, under the date of December 31, 1852.

See Blodget cross int. 32 to 34—Exhibit H.

And the statement on that trial balance book is SUBSTANTIALLY DIFFERENT from the statement produced by Chapin.

EXPLANATION.

The trial balance is a condensed statement of the balance of all the accounts on the ledger.

Blodget, p. 416, cross int. 30.

Blodget, at the time of giving his testimony, in 1872, was treasurer of the Providence Institution for Savings, but at the time when the statement was furnished to Frieze, in 1853, he was book-keeper for the company, and made the trial balance of December 31, 1852. Exhibit H, p. 442.

At the time of his testimony he examined the books and accounts of the company, with a view to ascertain its condition on the 31st December, 1852, and made up and filed the Exhibit F, p. 440, as the result of his examination, which corresponds, in every item, with the statement furnished to Frieze.

Blodget, pp. 412, 413, 416. Ints. 1 to 28.

John R. Balch, the accountant selected by the complainants, was handed the Exhibit F, to compare it with the books and accounts of the company, which he did, and says it is a true and correct statement of the condition of the company, December 31st, 1852.

Balch, p. 417, int. 4.

PRETENDED ERRORS.

Brief, p. 4, d.—"This falsehood not only imposed upon Frieze, but has been repeated, from time to time since, to impose upon the court and master."

EXPLANATIONS.

This we deny most decidedly. Page 145 of the Record, this question is asked of Frieze:

Int. 8. "After said bill was filed, state whether or not a "written statement of the condition of said company was fur- "nished to you and by whom."

Ans. "After the bill was filed, a written statement of the "standing of the company was rendered by Mr. Chapin."

Int. 9. "State whether or not you had any difficulty in un- "derstanding said statement, whether you have discovered any "errors in it, and whether you were deceived or misled by it?"

Ans. "I understood the statement very clearly, but objected "to it on account of its not going into details sufficiently. At

" that time I wanted an exact account of the stock in the mill.
" I have no recollection of having found any errors in the
" statement, and do not think it deceived me."

Int. 13 *in part*, p. 146. " State whether, while such negotia-
" tions were pending, you knew the condition of the Atlantic
" De Laine Co., of the assigned estate in your hands, and the
" state of the accounts between yourself and the said Atlantic
" DeLaine Co. and the said Chapin."

Ans. " I did know of the condition of the DeLaine Co.
" from their statements, and from the general condition of
" business at that time, I knew what was the condition of the
" assigned estate, and of the accounts between myself and said
" Chapin and the company, and from my own book and from
" their accounts."

Cross int. 10, p. 150. " In your answer to the 13th direct in-
" terrogatory, you state that you knew the condition of the
" company from their statements. To what statements, other
" than that of February 26th, 1853, do you refer ?"

Ans. " I refer to the verbal statements of Mr Chapin, the
" treasurer of the company, and I judged of their truthfulness
" by the general state of business at that time."

George B. Holmes, p. 78, in answer to 2*d* int., *p.* 77, *says :* I called upon Geo. W. Chapin about the 1st of March, 1853, at the request of Lyman B. Frieze, assignee Charles T. James, to see if any arrangement could be made towards the settlement of Charles T. James's matters and accounts with the Atlantic DeLaine Co. I acted as adviser to Lyman B. Frieze, assignee. I proposed to Geo. W. Chapin, trustee, to have the whole matter setted.

Ans. to 4th int. on p. 79. " In answer to the fourth interro-
" gatory he saith : There was such a statement before me, and
" I understood it came from the Atlantic DeLaine Co., and
" Mr. Frieze or Mr. Parkhurst handed me the statement. From
" it and the books and accounts of the company, with Mr.
" Frieze and General James, I made up the annexed statement
" marked A, in order to see what James's interest would be
" worth. I estimated his stock to be worth 70 per cent. At
" that value he would be left $2,574.00, in debt. With the in-
" formation I obtained elsewhere, from disinterested parties as

"to the value of said stock, and seeing the company were "heavily in debt, and ascertaining that the stock could not be "sold for fifty cents of its par value, and finding there was no "sale for it under these circumstances, I advised Mr. Frieze to "settle the whole matter."

Geo. B. Holmes' answer to 1st cross int., p. 79. "In answer to "the first cross interrogatory he saith: There were other pa- "pers besides the statement before me, such as the books and "accounts of the assignee, and the accounts of the company with "Frieze and James."

Geo. B. Holmes' answer to 2d cross int., p. 79. "In answer "to the second cross interrogatory he saith: My advice was "founded upon the statement and accounts before me and the "general value of the property, and from the best information "I could obtain, and from my own judgment."

In answer to 4th cross int., p. 80, he saith: "No, from the "character of the parties I did not think of such a thing."

PRETENDED ERROR.

Brief p. 5 second.—The following item in the statement, to wit. Balance $70,365.53 is not to be found upon any of the books of the company. It is obtained by adding up previous items on the credit side of the account, and subtracting them from the sum total on the debit side.

EXPLANATIONS.

Balch *ubi. sup.* and explanation of answer to cross int. 10.

This is a correct explanation of how the said balance of $70,365.53 was obtained. The statement and the trial balance shows that the company owed, including the capital stock, $789,541.55, and that they had assets amounting to $719,176.02, showing less assets than debts by $70,365.53.

The correctness of this balance, as well as that of the statement furnished to Frieze, is proved by the statement called for by the respondents on page 169. Chapin, cross int. 23, viz.:

Will you annex to your deposition a full and detailed

statement of the exact condition standing and accounts of the Atlantic DeLaine Co. on the 1st day of March, 1853, giving in detail each item of its assets, and each item of its indebtedness or liability. Ans. I will as far as I can. It is the paper annexed marked B. B. Record, pp. 205, 206. Here is a copy of it.

Statement of the Atlantic DeLaine Co., March 1, 1853.

Dr.

Bills payable	$434,260 61
Due Hoyt, Tillinghast Co. for advances	63,398 02
" Hacker, Lee & Co	38,796 37
" Dodge, Tucker & Co	32,767 41
" Hill, Carpenter & Co	24,758 69
" Day, Owen & Co., for advances	1,564 39
" Geo. W. Chapin, trustee	8,524 30
" Globe Printing Co. on account	888 12
" S. C. Blodget	50 00
Stock account	237,495 33
	$842,503 44

Cr.

Cash	$24,204 73
Interest	8,479 78
Albert Dailey	1,900 00
Stock at Mill and amount paid for labor and supplies since January 1, 1853	28,229 39
L. B. Frieze, assignee	53,314 77
Cotton at Mill January 1, 1853, and sent to Mill to date	11,923 67
Construction account	40,795 33
Cassimeres in agent's hands and stock in process at Mill	9,038 97
Delaines in Agent's hands and Stock in process at Mill	170,208 64

Wool at Mill January 1, 1853, and purchased since	$150,210 76
Charles T. James' contract account	260,240 64
Real Estate	13,140 60
Geo. W. Chapin	326 37
Providence Steam and Gas Pipe Co	162 38
For amount of loss	70,327 41
	$842,503 44

PRETENDED ERROR.

"Brief, p. 5, Third.—The following item in the statement to wit: 'Delaines, Cassimeres on hand $149,516.75' does not appear on any book of the company, and is not a correct statement from any accounts of the company."

EXPLANATION.

The items of this amount are shown in Exhibit B—Record pp. 424, 425—Blodget, cross int. 16, p. 415 is asked. "Did you take the amount of goods in the hands of agents from the accounts-current of the agents themselves?"

Ans. "From the accounts current, and a paper or list handed to me by Mr. Chapin, with which I compared the stock on hand."

Cross int. 17, p. 415. "What paper do you refer to which was handed to you by Mr. Chapin?"

Ans. "That paper, Exhibit B." (Record, p. 424, 425.)

Cross int. 18, p. 415. "Did you know anything about that paper before it was handed to you by Mr. Chapin?"

Ans. "I hardly know how to answer that, sir. Undoubtedly, I have seen it before, years ago. I couldn't swear positively. Every year there was an account of that kind made up, and I have been in the habit of using them to make up my own statements from, and undoubtedly I saw that one.."

Int. 22, p. 413. State whether the item, "Delaines and Cassimeres on hand, $149,516.74," does or does not include the goods unsold in the hands of agents?

Ans. I have examined and compared the statement marked F (Record, p. 440), with the books and accounts of the company, and find that the item "Delaines and Cassimeres on hand, $149,516.74," includes all the goods on hand, and unsold in the hands of agents, and at the Mill—the amount at the Mill being only $298.04—to which he adds as at Mill, "and 53,221 yards delaines." (Record, p. 417.)

PRETENDED ERROR.

"Brief, p. 5. Third. 6.—The paper produced. Exhibit B, is not correct."

EXPLANATION.

The only item of incorrectness in this Exhibit, suggested by the complainants, is in the stock on hand of Day, Owen & Co. They having 47 cases, 64,934 yards on hand instead of 36 cases, 48,872 yards as reported in Exhibit B. This is frankly admitted when discovered, at the time of the examination. (See Chapin, p. 402, cross int. 140.)

"In the paper Exhibit B the amount of goods on hand Dec. 31, 1852, in the hands of Day, Owen & Co., appears to be 36 cases, 48,872 yards. In their account produced in this examination, marked E (Rec., p. 436), "the amount of Delaines on hand is stated at 47 cases, 64,934 yards. Which is correct?"

Ans. The statement E. "The eleven cases on the right hand having been omitted in adding, when this account, Exhibit B, was drawn off."

All the Delaines (Cashmeres being a variety of Delaines) sent Day, Owen & Co. were second quality, imperfect in manufacture, and worth not to exceed 2-3 the value of perfect goods. The average value of the Delaines on hand is 10 cents per yard, calling these 7 cents per yard, there being about 16,000 yards of them, their value would be $1,120, which would decrease the balance on the statement that amount.

PRETENDED.

Brief, p. 5, c.—Supposing the quantity of goods on hand to be correctly stated, there is nothing in the record to show that the valuation was correct, or even approximately correct at the time the statement was prepared.

EXPLANATION.

Chapin, p. 169,—cross int. 24, is asked. Were the DeLaines and Cassimeres, or any portion of them which in statement I, (Record, p. 182,) you say, were on hand, and the aggregate value of which you therein fix at $149,516.74, subseqeuntly sold, and if so will you annex a statement of the time, when, by whom, and for what amount they, or any part of them, were sold?"

Ans. "They were subsequently sold. I will annex such statement if in my power. The times and amounts for which they were sold appear on Exhibit Z."

Exhibit Z, Record p. 201, DeLaines and Cassimeres on hand January 1, 1853.

DeLaines	$147,734 30
Cassimeres	1,782 44
	$149,516 74

The above DeLaines were sold in 1853 and 1854 by Hoyt, Tillinghast & Co., Hacker Lea & Co., Dodge, Tucker & Co., and Day Owen & Co., and netted $139,245.56, being $8,488.74 less than their estimated value. The Cassimeres were sold in 1853 by the same parties averaging about 69 cts. per yard, or $1,907.06," a gain of $124.62. This shows an over estimated value Dec. 31, 1852, of $8,364.12.

PRETENDED ERROR.

"Brief, p. 5., Fourth.—The item in the statement wool, cotton and supplies at Mill, $190,692.17 is not to be found upon the books nor can it be made up from any items to be found upon the books. The item is not correctly taken from Exhibit C, there being a difference unexplained of upwards of $5,000 between the two."

EXPLANATION.

The inventory book at the Mill for the early years of the Company, was called for by the complainants in 1872, nearly

20 years having elapsed. It was carefully searched for, but could not be found. Chapin p. 404 cross int. 164, 165, 166.

In place of the inventory book, Exhibit C. Record, p. 425, was produced and sworn to be a true copy of the inventory made at the Mill, Dec. 31, 1852. Chapin pp. 391, 403, 404, cross int. 7, 147, 148, 164, 165, 166, and is as follows:

Wool on hand 332,540 lbs. at 44 & 46 cts.....	$147,823.96
Cotton on hand, 28,470 lbs.....	3,642.98
DeLaine stock at Mill.....	22,306.26
Cassimere stock at Mill.....	7,554.57
Supplies and repairs per DeLaine acct.....	5,225.66
" " " " Cassimere act.....	2,124.60
Coal at Mill	4,827.75
Furniture.....	2,000.00
	$195,508.78

190,692.17
195,505.78

4,813.61 unpaid bills.

Showing a stock on hand of $195,505 78 from which was to be deducted the amount of $4,813 61 for unpaid bills, so much of the stock not having been paid for. This left a stock of $190,692 17, as in the statement.

If the stock had been put down in the statement furnished to Frieze, at $195,505 78, as perhaps it might more properly have been, then the amount of unpaid bills, $4,813 61 must have been added to the liabilities of the company. The result being the same in either case.

In proof that the item "wool, cotton and supplies at mill, $190,692.17," did not deceive Frieze by their being undervalued.

Chapin, Rec. p. 169, cross int. 25. Were the "wool and cotton at mill" named in the statement I, (p. 182) sold or manufactured into goods after January 1st, 1853?

Ans. They were either made into goods or sold (p. 170 cross int. 27). Will you annex a statement of the amount for which that portion of said cotton and wool which was sold,

was sold; and the amount for which the goods into which the remainder was manufactured, was sold, giving the cost of manufacture if you can?"

Ans. I will if I can. I annex such a statement. It is the paper marked CC. This is found on Record page 206, and is as follows:

CC.

None of the cotton on hand January 1st, 1853, was sold, and only about 40,000 lbs. of the wool, bringing $19,942.31. The rest was manufactured into DeLaines and Cassimeres. The DeLaines made from the wool, cost. including cotton and manufacturing, $187,176.82, and netted about $177,315.16.

"The cassimeres made from said wool cost, including manufacturing $32,581.58, and netted about $35,500."

This shows that in manufacturing the wool and cotton on hand, January 1, 1853, into delaines and cassimeres, there was a loss on delaines of $9,861.66, and a gain on cassimeres of $2,918.42, or $6,943.24 less than their estimated value, January 1st, 1853.

We therefore show an

Over estimate of value of delaines and cassimeres on hand, December 31, 1852.....	$8,364	12
Do. wool, cotton and supplies on hand December 31, 1852.....	6,943	24
	$15,307	36
Error 16,000 yards in Day, Owen & Co.'s stock, December 31, 1852, at 7 cents per yard.....	$1,120	00
Total over estimate of stock December 31, 1852..	$14,187	36

PRETENDED ERROR.

"Brief, p. 6. The true statement of these values appears in the statement Exhibit H, and in the entries actually made upon the books as testified to by Chapin cross ints. 124 to 137, Blodget cross ints. 7 to 11, and by Balch cross ints. 11 to 14."

EXPLANATION.

We cordially admit that these values are correctly stated in Exhibit H, (Rec. page 442) which is the trial balance of the company, and a statement of the balance of all the accounts on the ledger (Blodget, p. 416, cross int. 30) and will here show that there is actually no difference between Exhibit H and the books, and Exhibit C, p. 425.

Exhibit H, p. 442.	Wool account..			$147,823 96
" C, p. 425.	Wool on hand...	$147,823 96		
" H, p. 442.	Cotton account..			3,642 98
" C, p. 425.	Cotton on hand..	3,642 98		
" H, p. 442.	Mill account....			9,364 40
Exhibit C, p. 425.	Supplies, &c., per DeLaine account.....	$5,225 65		
	Supplies, &c., per cassimere account.....	2,124 60		
	Coal at mill.....	4,827 75		
	Furniture.....	2,000 00		
		$14,178 01		
	Less unpaid bills.....	4,813 61		
			9,364 40	
Exhibit C, p. 425.	DeLaine stock at mill.....		22,306 26	22,306 26
Exhibit C, p. 425.	Cassimere stock at mill.....		7,554 57	7,554 57
			$190,692 17	$190,692 17

The item of "DeLaine stock at mill, $22,306.26," in Exhibit C, is included in the balance of DeLaine account on the trial balance, Exhibit H, as shown here.

Chapin, p. 402, cross int. 134. What does the balance of the Delaine account express?

Ans. It expresses the cost of the Delaines made to that date, less what had been sold, and the amounts received for said sales.

Chapin, cross int. 136. Is there upon the books any separate account of Delaine stock from the general wool account?

Ans. No; that is included in the balance of Delaine account.

Chapin, cross int. 137. At what stage in the process of manufacture, or in your business, do the wool, cotton and supply accounts end, and the DeLaine and Cassimere accounts begin?

Ans. "When they are put into use for manufacture into the mill."

The item of "Cassimere stock at mill, $7,554.57," is included in the balance of Cassimere account exhibit, as shown by cross int. 137, as quoted above, and also by

Chapin, p. 402, cross int. 133. What does the balance of the Cassimere account express?

Ans. "It expresses the cost of the Cassimeres made to that date, less what had been sold and the amounts received for said sales."

PRETENDED ERROR.

Brief, p. 6. Exhibit C, as now produced, differs from Exhibit Z continued (p. 306) annexed by Chapin to his former deposition.

EXPLANATION.

Said difference is exactly the amount of the unpaid bills heretofore referred to, thus:

Rec. p. 425.

Exhibit C (Rec., p. 425).....	$195,508 78	
Unpaid bills.....	4,813 61	
Rec. 201.		$190,692 17
Exhibit Z, continued (Rec., p. 201).....		190,692 17

PRETENDED ERROR.

Brief, p. 6. Fifth. The following items on the credit side of said statement, to wit: "Cost of real estate, Cassimere department, and amount paid Charles T. James's contract account," which amount to $310,006.04.

And "due from Lyman B. Frieze, assignee," amounting to $53,314.77, contains several important false statements, which we shall proceed to make apparent.

Brief 6. Fifth.

EXPLANATION.

The items of this $310,006.04 are reported by Balch on p. 273, as follows:

Real estate	$13,140 60
Construction account (this includes cassimere department)	40,250 33
Charles T. James contract account	256,615 11
	$310,006 04

This amount represented what the company had paid out for the mill property to December 31, 1852.

We admit that the items in Exhibit O (Record pp. 185 to 188) amounting to $20,852.03, were charged to James contract account without authority from James or Frieze. The amount of interest was a correct charge. As will be seen by examining the items of Exhibit O, they were such as were needful to complete the mill and machinery. Mr. Chapin thought they came within the contract, and that James's estate should pay for them (Record p. 401, cross. int. 118), and they were charged to the contract account to be adjusted whenever the accounts between the company and James and Frieze should be settled: If they did not belong to the contract account they belonged to the construction account; therefore, whichever way it was decided, the item of $310,006.04 would remain unchanged.

If the $20,852.03 in Exhibit O was erroneously charged to James's contract account, it, as Mr. Jenckes said in his argument, "actually went into the cost of the mill," and therefore is properly embraced in the item of $310,006.04, in Exhibit A. Mr. Frieze had previously, from time to time, had copies of this contract account, and also of his account as assignee, and knew all about these items, and just how each account stood on the company's books. (From Dep. Record, p. 146, In. 13.) "State whether while such negotiations were pending, you knew the condition of the Atlantic DeLaine Company, of the assignee's estate in your hands, and the state of the accounts between yourself and the said Atlantic DeLaine Company and the said Chapin?" Answer, "I did know of the condition of the DeLaine Company from their statements and from the general condition of business at the time. I

knew what was the condition of the assigned estate and of *the accounts between myself and the said Chapin and the company, from my own books and from their accounts.*"

All those accounts passed under the supervision of the master, in the presence of counsel, at the first hearing. He reported the result of his inquiries to the court, and neither party made any exception to these items. That being the case, I claim it as too late now to raise this sort of inquiry. And, upon the face of this brief, the items which are set up improperly in the contract account of Gen. James, if they come out of that contract account to reduce it by that amount, they must go into the construction account of the company to increase that by the same amount; and so it makes no difference as to the actual condition of the company whether they are in one account or the other.

PRETENDED ERROR.

The charge against Frieze, assignee, appears improperly in this statement.

The sum of $29,000 remained due to James upon his contract which should have been deducted from the $53,314.77, and also the sum of $13,098.98 (Record, p. 176) which appears to have been allowed in the account (L. B. Frieze, assignee, account, Record, p. 205).

THIS IS AN INGENIOUS ARGUMENT ABOUT ALLEGED ERRORS IN THE ACCOUNT BETWEEN FRIEZE, ASSIGNEE, AND THE COMPANY, AN ACCOUNT WHICH HAD BEEN SETTLED, BETWEEN THE PARTIES WITH FULL KNOWLEDGE OF ALL THE FACTS, WHICH HAD BEEN PRESENTED TO THE MASTER, AND ALLOWED BY HIM WITHOUT OBJECTION, AND NO EXCEPTIONS TAKEN: NOW IN THE CLOSING ARGUMENT A STATEMENT OF COUNSEL UNSUPPORTED BY EVIDENCE IS MADE THE BASIS OF CHARGE OF ERROR.

But there is no error.

This statement was our exhibit from the books as the accounts therein stood Dec. 31, 1852, and "the charge against Frieze assignee," of $53,314.77 is precisely as the books showed it to be, see Trial balance sheet, Exhibit H, p. 442, where it says "L. B. Frieze, assignee, $53,314.77," see Blodget, p. 412, int. 13. "What was the amount due from Frieze, assignee?" Ans. $53,314.77.

At that date, James's contract account and Frieze's account were both unsettled, and all the statement could show was the

balance of those accounts, as they stood on the company's books, Dec. 31, 1852.

PRETENDED DECEPTION AS TO COST OF MILL.

The item of $310,006.04 was evidently placed in this statement for the purpose of conveying the idea to the person or persons to whom it might be exhibited, that it was the approximate cost of the mill, and as being the utmost valuation that could be placed on the mill and other property of the company.

TRUE EXPLANATION.

It is attempted to show that some deception was practised upon the assignee by representing the cost of the mill to us to be $310,000, whereas it actually cost Gen. James a much larger sum. This is a strange position. In order truly to represent, the condition of our company, we must SHOW THE COST OF THE MILL TO US, as we did.

If anybody knew what the actual cost of the mill was to Gen. James, he or his assignee ought to know. There is some evidence that neither of them knew very accurately what the cost was. We had no knowledge upon the subject, and it had nothing to do with the condition of the company. The mill was there; Frieze could see it as well as we could. He or his assignor ought to have known what it cost; neither of them had any right to ask us for information about that. We told him truly what we paid for it.

PRETENDED ERROR.

The item "Bills Payable, $410,615.39 while upon its face literally true, conveys a very false and inaccurate idea of the financial obligations of the company, and the manner in which they had been and in which they were expected to be met at maturity."

EXPLANATION.

The notes which make up this amount are individually set forth in Exhibit V, Record, pp. 197 and 198, and also in Master's Report, Record, pp. 279 and 280, where they are certified

by Mr. Balch as being in accord with the books; and even Mr. Jencks admits the amount is "literally true." He claims that we should have added the $76,000 of notes given for accommodation drafts on the agents, to the $90,026.19 mentioned in the statement as due agents, making $166,026.19 due the agents; because, on Chapin's estimates of the goods in agents' hands, they had $149,000, value of goods in hand. But Chapin does not say there was that amount of goods in agents' hands. The statement says, "DeLaines and Cassimeres on hand $149,516.74," but does not say they were in the hands of agents. A glance at Exhibit B, pp. 424, 425 shows that there were on hand December 31, 1852, 1,412,189 yards of DeLaines, valued at $147,734.89, a little over ten cents per yard. An examination of the Exhibit will show that there were in the hands of agents only 1,170,518, which at 10 cents per yard would be $117,051.18, or $30,000 less than Mr. Jencks says—the rest of the goods being at the mill and at the Globe Print Works for printing. Mr. Jencks also says the goods in the agents' hands—these $117,000 of value—brought enough to pay the $90,000 and $76,000—total $166,000—when it's proved they did not bring so much by several thousand dollars as they were valued at. What figures! It is preposterous to suppose that the treasurer of any corporation would make accommodation drafts when there were goods in agents' hands which he could draw on. The list of accommodation drafts on page 391, Record, (Chapin's Cr. Int. 8) shows that said drafts were drawn all along from July 3d to December 27th, 1852, and there is no evidence showing that there were goods on hand during that time, until the last of December, on which drafts could have been drawn. The general custom among commission merchants is to accept only two-thirds of the value of the goods on hand. The above figures show that these agents had accepted on January 1, 1853, 77 per cent. of the value.

Take any view of these accommodation drafts you choose, Frieze was not deceived by their existence. Chapin names in his cross-examination the origin of these drafts (pp. 395, 396 and 397, Ints. 50 to 67), and that the need of his company required their continuance from 1851 down to 1861.

a loss of $9,861.66. That the cassimeres made from the said wool cost $32.581.58 and netted $35,500, a gain of $2,918.42. Deduct this amount from $9,861.66 leaves a loss of $6,943.24.

Interest due James' contract account.....	$14,300 00
Paid Wm. Mason & Co.....	6,550 00
Loss on delaines and cassimeres on hand, Jany. 1, 1853.....	8,364 12
Loss on delaines and cassimeres made from wool on hand, Jany. 1, 1853.....	6,943 24
	$36,157 36
Less error in Day, Owen & Co's stock.....	1,120 00
Total over valuation of property Dec. 31, 1852...	$35,037 36

This is fully explained in Chapin, Int. 32, pp. 164, 165.

THE COURT AFFIRMED THE RIGHT OF THE COMPLAINANT TO MAINTAIN THE BILL ALTHOUGH HE NEGLECTED TO EXHIBIT THE SAME FOR SIX YEARS, WITH A FULL ACKNOWLEDGE OF ALL THE FACTS AND WITHOUT ANY ALLEGATION OR PROOF OF ANY CAUSE FOR THE DELAY, WHEREAS THEY SHOULD HAVE DISMISSED THE BILL FOR THIS LACHES.

The case upon the facts is clearly within the principle of the case in 2 Wallace, 94 (Badger *vs.* Badger). The ground upon which the attempt is made to distinguish this from that case is not sustained by the evidence. See the evidence as printed in his Brief under the point "The use which was made of the statement."

THE COURT AFFIRMED THE RIGHT OF THE COMPLAINANT TO MAINTAIN THE BILL, ALTHOUGH IT WAS PROVED THAT DEBTS TO A LARGE AMOUNT WERE OUTSTANDING, AGAINST THE ASSIGNED ESTATE IN THE HANDS OF THE ASSIGNEE, WHEREAS FOR THIS REASON THE BILL SHOULD HAVE BEEN DISMISSED.

THE COURT BY THE FINAL DECREE, HELD GEORGE W. CHAPIN INDIVIDUALLY RESPONSIBLE FOR THE SUM ASCERTAINED BY SUCH DECREE TO BE DUE TO THE COMPLAINANT, WHEREAS THE SAID CHAPIN WAS NOT INDIVIDUALLY RESPONSIBLE THEREFOR, AND SHOULD NOT HAVE BEEN HELD TO BE SO.

There is nothing in the allegations of the bill or in the prayer for relief to justify the decree against Chapin.

THE DEMURRERS WERE OVERRULED, WHEREAS THEY SHOULD HAVE BEEN SUSTAINED.

There is no authority to sustain a bill charging fraud in these general terms, and the record now establishes beyond question the fact that if the complainant had been required to make SPECIFIC charges or give a REASON for not doing so, this long litigation would have had a speedy termination.

THE COURT SHOULD HAVE CONFIRMED THE FIRST REPORT OF THE MASTER AND PASSED A PROPER DECREE PURSUANT THERETO; WHEREAS THE COURT REFUSED SO TO DO, AND RECOMMITTED THE CASE TO THE MASTER WITH INSTRUCTIONS.

UPON THE COMING IN OF THE SECOND REPORT OF THE MASTER, AND THE OPENING OF THE CASE FOR FURTHER TESTIMONY, AND AFTER SUCH TESTIMONY HAD BEEN TAKEN AND HEARING HAD UPON THE SAME, THE COURT SHOULD HAVE REVERSED THE INTERLOCUTORY DECREE AND DISMISSED THE BILL, WHEREAS THEY REFUSED SO TO DO, AND RECOMMITTED THE CASE TO THE MASTER WITH INSTRUCTIONS.

UPON THE COMING IN OF THE THIRD REPORT OF THE MASTER, THE COURT SHOULD HAVE SUSTAINED THE EXCEPTIONS OF THE RESPONDENTS TO THE SECOND AND THIRD REPORTS OF THE MASTER AND SHOULD HAVE CONFIRMED HIS FIRST REPORT, WHEREAS THEY REFUSED SO TO DO.

THE COURT IN STATING THE AMOUNT PRAYED FOR IN THE BILL TOOK INTO ACCOUNT THE TRANSACTIONS OF THE DEFENDANT CORPORATION SUBSEQUENT TO THE DATE OF THE INSTRUMENT OF THE RELEASE AND SETTLEMENT WHICH WAS DECLARED TO BE VOID BY THE INTERLOCUTORY DECREE, WHEREAS THEY SHOULD HAVE CONFINED THE ACCOUNTING TO THE TIME PRIOR TO AND AT SAID DATE.

THE COURT HELD THE RESPONDENTS TO ACCOUNT AS MORTGAGEES, WRONGFULLY IN POSSESSION OF THE MORTGAGED PROPERTY, AND HELD THE RESPONDENTS ACCOUNTABLE FOR PROFITS, AND REFUSED TO CREDIT THEM WITH LOSSES, WHEREAS THE RESPONDENTS WERE NOT MORTGAGEES WRONGFULLY IN POSSESSION, AND OUGHT NOT TO HAVE BEEN HELD ACCOUNTABLE AS SUCH.

In support of the foregoing claims of error the respondents submit the following statement of—

THE CASE, AND THE LEGAL PROPOSITIONS UPON WHICH THEY RELY.

The case in which this account is called for, is a bill originally filed by the complainant's intestate, Charles T. James, against the Atlantic DeLaine Company, George W. Chapin and Lyman B. Frieze, assignee of said James, to set aside an instrument of release and settlement made by said Lyman B. Frieze, assignee of said James, as having been obtained by fraud, and to have the said Atlantic DeLaine Company declared to hold the stock as the trustee of the said James, and that an account may be taken of all the dealings between said James, and said defendant corporation, and the defendant George W. Chapin, in his capacity as treasurer of the said corporation, or otherwise, under said contract, and that the complainant may be declared to be entitled to a conveyance and transfer of the shares of the capital stock of said defendant corporation, originally subscribed for and owned by the said James, upon his paying the sum that may be justly found due upon the establishment of his accounts with said defendant corporation, and that said defendant George W. Chapin, and the said defendant Lyman B. Frieze, may be required to convey and release to the said James all their interest in the said stock, upon the settlement of said accounts, and the payment of said balance, and for such other and further relief in the premises as the nature of the case shall require, and to your Honors shall seem meet.

I.—The account subsequent to the settlement can serve no legal purpose of the complainant. She asks to have certain

instruments of settlement declared void; to have an account taken between her intestate and his assignee and the respondents, the Atlantic DeLaine Company and George W. Chapin, and upon payment by her of any balance found due to said respondents, to have the property, held by said respondents as security for such balance, conveyed to her. To ascertain such balance, an account of the dealings between the complainant's intestate and his assignee, and the said respondents, is necessary. But the value of the property in our hands, and which is to be conveyed to the complainant upon payment of the balance found against her, is not an element entering into such account. The balance of the account is in no way affected by the value of such property. The complainant can have only the specific relief prayed for in her bill.

II.—This account cannot aid the court in making a proper decree in the case. When the court has ascertained the true balance of the account, as prayed for, they can order a conveyance of the property, pursuant to the prayer of the bill, and they can do nothing more or different from this; and the value of the property to be conveyed is quite immaterial. It may be quite convenient for the complainant, after disturbing a settlement, in which her intestate quietly acquiesced for six years, in an indirect way to find out whether it is worth while to pay what she owes and take her property, or whether it may not be better for her to discontinue her case, and leave the settlement as it was; but this is not a purpose which the court can lawfully aid.

III.—The complainant would seem to think that she can make the inquiry called for, with a view to see if there has been any fraud or negligence, or misfeasance of any kind, in the management of the property, and if any such be discovered and *proved to the satisfaction of the master*, then to have the matter inquired into and ascertain the amount of damage sustained by the complainant in consequence thereof, and to carry the amount of such damage into the account to be taken to the credit of the complainant. This would be a strange proceeding.

In an ordinary bill to redeem, the mortgagor can only have an account of actual rents and profits, except upon charges in the bill of mismanagement of the property, which charges the respondent would have an opportunity to answer and contest by proofs. If anything is settled, it is that no relief can be had except upon proper allegations in the bill, which allegations the respondent has had an opportunity to answer. It would seem that there can be no more manifest violation of this rule (so clearly, just and reasonable), than to permit a complainant, who asks to have certain property conveyed upon payment of balance of account for which that property stands as a security, and asks for nothing more, to go into an inquiry before the master about the mismanagement of the property—a question not raised by the pleadings and proofs—a question about which, therefore, *the court* can have nothing to do in framing the final decree in the cause. The master might with as much propriety inquire into any other misfeasance of the respondent toward the complainant—an injury to the person or reputation, for instance, of the complainant or her intestate, ascertain the amount of damages therefor, and carry the same into the account to the credit of the complainant, to reduce the amount which she must pay in order to get her property. The inquiry would be in no respect more foreign to the charges in the bill, than the one which the complainant is now urging upon the court and the master.

IV.—But the complainant has suggested that, although no dividends have been declared, and the company have now no surplus from which to declare dividends, still dividends may have been earned and invested in new buildings, &c., and that the dividends so earned are a proper item to be carried to the credit of the complainant in the account to be taken before the master. This is a plausible, but we submit an unsound proposition. To support it, reference is made to the principle that the mortgagee cannot invest rents and profits, and thus improve the mortgagor out of his estate. That principle, we apprehend, must be limited to cases where the mortgagee invests actual rents and profits without the assent, express or implied, of the mortgagor. But in no event can the principle have any application to this case. This will clearly appear, if the facts be care-

fully observed. The mortgagor of the stock in the Atlantic De-Laine Company was the complainant's intestate, Charles T. James. The mortgagee was George W. Chapin. The mortgagor assigned the equity of redemption of this stock to Lyman B. Frieze. Then the settlement was made which is set aside by this interlocutory decree. Meantime Charles T. James has deceased, and the complainant is his administratrix. And now George W. Chapin holds this stock as mortgagee, and the equity of redemption is in Lyman B. Frieze, assignee of Charles T. James. What dividends can this mortgagee, Geo. W. Chapin, be called upon to account for, except such as have been paid to him, or at least declared in favor of the stock which he holds as mortgagee? This is the legal position of the parties. But it may be said that Chapin holds the stock as *mortgagee and trustee.* This is true; but trustee for whom? For Hoyt and other individuals and firms, who advanced money to Charles T. James upon this mortgage as security, not as traders for the Atlantic De Laine Company; and so his capacity as trustee does not affect the question. But assume for the purposes of this argument—and for no other purpose, for the fact is not so—that the interposition of this trustee and these *cestuis que trustent* is formal merely, and that this mortgagee is *substantially* a mortgagee of Charles T. James, a stockholder to the Atlantic DeLaine Company, of his stock in that corporation. This will not help the case of the complainant. A stockholder cannot compel the corporation to declare dividends, and the corporation may invest earnings in improvements against the will of a stockholder. Charles T. James, before his assignment to Frieze, was a stockholder, notwithstanding his mortgage. Could he have prevented the corporation, acting lawfully under charter and by-laws, from investing earnings in improvements? After the assignment of Charles T. James, L. B. Frieze was a stockholder until the settlement. Could he have done what his assignor could not do? After the settlement (which was at most voidable—not absolutely void), for the six years during which no objection was made to it by Charles T. James or his assignee, who was to object to the investment by the corporation of earnings in improvements, and since the suit was contemplated or commenced, who has

objected? And upon what reasonable or equitable ground can the complainant now object?

We thought the court went to the very verge of equity when it permitted the complainant's intestate to disturb a settlement after waiting six years to see whether it would be for her interest to do so. But after having permitted that, we most respectfully, but most earnestly, submit to the court that this complainant, the legal representative of Charles T. James, should be content with what her intestate asked for, and should not be allowed to take the earnings of her stock, (if it be hers), and also the improvements in which those earnings have been lawfully invested without objection on her part, or on the part of her intestate or his assignee, and in which those earnings would have been lawfully invested, even if they had objected, each and all of them.

See Redmayne *v.* Forster, Law Rep., vol. 2d, Equity Cases, p. 467.

V. We do not object, under this decree, to render a full account of everything which will enable the master and the court to see exactly how the account stands between us and the complainant; nor do we object, if the decision of this court, already rendered, shall be finally adhered to and sustained, to convey to the complainant her stock in the Atlantic DeLaine Company, upon payment by her of any amount which may be found due to us, pursuant to the prayer of the bill. And this is all the complainant or her intestate have asked for. It is not charged in the bill that, either by fraud or mismanagement, we have impaired the value of the complainant's stock, and are accountable for the loss so sustained. It seems plain, that in the absence of any such charge, no injury can be made by court or master upon that subject; and it is only on such an inquiry that this act can be pertinent and material. When the complainant shall have established by final decree, and by payment of what she owes us, and such debts of her intestate as his stock is liable for, her position as a *stockholder*, she will have a right to know the condition of the company. Upon a bill properly framed with proper parties, the

conduct of the company in the management of the business may be inquired into, and not otherwise.

These were the positions taken by the respondents, before the master. Availing themselves of a knowledge of the reply then made to these positions, the respondents submit the following:

ADDITIONAL SUGGESTIONS.

The complainant's argument is this:

The mortgaged property is now to be redeemed, and whatever income from it the mortgagee either has actually received, or without his wilful default as mortgagee would have received, is to be charged against the mortgagee.

This principle is correct. But it remains to inquire:

I.—What was the mortgaged property?

II.—Who was the mortgagee who failed to obtain receipts from the mortgaged property which he might and ought to have received?

III.—Was there any breach of duty by the mortgagee, *in his capacity of mortgagee*, to obtain from the mortgaged property any and what receipts which as mortgagee he might and ought to have received?

I.—The mortgaged property was not the property of the corporation or any aliquot part of that property. It was a given number of shares of the stock of the corporation.

II.—The mortgagee was Chapin, who stood as a trustee for certain natural persons, who advanced money to the mortgagor to enable him to complete his contract, and took through their trustee this security, which is now to be redeemed.

III.—Chapin, the trustee, and the *cestuis que trustent*, were stockholders, and some of them were directors of the corporation. But their acts *as stockholders or directors* in the management of the affairs of the corporation, *were not done as mortgagees.* They were exercising their own rights and powers as stockholders and as officers of the corporation. The fact that they were also mortgagees of the stock of James did not *deprive them of any power or right of their own;* and if they or Chapin failed to receive dividends on the stock of James,

only because they *fairly* and *lawfully* exercised their own rights to have the earnings invested instead of divided, it cannot be maintained that in any legal sense Chapin or the *cestuis que trustent ought* to have received the earnings in the form of dividends, or were guilty of any legal default in not receiving them.

The two inquiries therefore are:

1st. Whether the *cestuis que trustent* and the trustee FAIRLY exercised their own *rights* and *powers* as *officers* and *stockholders*, to have the earnings invested instead of divided.

2d. Whether it is open to the plaintiffs to insist that they did not LAWFULLY exercise their own right and powers.

The mere statement of these two necessary inquiries shows how improper it is to raise them before the master at this stage of the case, without anything in the pleadings to warrant them.

The first involves an allegation of fraud. It is that the trustees and the *cestuis que trustent* have used the powers *unfairly*, so as to injure the mortgagees.

The second is that upon the actual facts the trustee and the *cestuis que trustent* so far exceeded their own powers in managing the affairs of the corporation that the mortgagor *upon this bill to redeem the stock* can impeach what they have done, *not as mortgagees*, but as *stockholders and officers in their own right*.

A bill to redeem may be admitted to call in question *all* the mortgagees have done *in that capacity*. But certainly not what the same persons have done when acting in another capacity, and under their own distinct rights; unless a case of fraudulent abuse of their own rights to injure the mortgagor is charged. And nothing of the kind is here pretended.

Nor is there any *necessity* to allow the mortgagor to go into any such inquiries on the taking of a mortgage account.

After the stock shall have been redeemed, if the managers of this corporation have been guilty in that capacity of any breach of duty, by which the value of the stock has been diminished, the mortgagor will have ample remedy. It is true it would not be what is now sought,—to have the earnings in money, and in addition the enhanced value of the stock by reason of the expenditure of the earnings and *the enhanced earnings by reason of*

those expenditures. But this result is so inequitable that in itself it affords a full answer to the claim now put forth.

If the earnings have been so expended, fairly and lawfully, why should the individual mortgagees who have not received them under or by reason of the mortgage, whose power to expend was not derived from the mortgage, and who have received no personal benefit from them except in common with the mortgagor, as stockholders, be condemned *in this account* to pay what has thus fairly and legally been spent?

As to the *fairness* of the exenditures, that is to say, as to the honest intent of all those who made them to do what they deemed most for the advantage of the corporation, and its interests, and income, and property, no question is or can be made upon the evidence.

The complainant's counsel only says that the expenditures of the earnings were not *duly voted* by the directors and the stockholders assembled in directors' or corporate meetings, and they were made while *this stock* was in abeyance, as it were.

I will only indicate very shortly what seems to me to be the true views of this objection.

I.—These expenditures were made out of the earnings of the corporation, by those actiug as *de facto* representatives and agents of the corporation, acting in good faith for the benefit of the corporation.

II.—These expenditures were within the power of the corporation, acting by its duly elected officers and its stockholders in corporate meeting assembled. If so authorized, no stockholder could have any legal cause of complaint.

III.—The *acquiescence* of every stockholder and director in these expenditures, with full knowledge of the facts, was a ratification of the acts of the treasurer in making the expenditures.

Hoyt *vs.* Thompson, 19 N. Y., 207.

And the fact that this stock was in abeyance is unimportant, because the action of its holder could not have affected the result.

IV.—That whether this be so, or not, the express ratification, by vote of the directors and stockholders, has made these ex-

pentures as legal as if they had originally been made by the legal vote of the directors and the major part of the stockholders of the corporation.

The cases on this subject are so numerous that it is difficult to make a selection. I cite a few:

Freeman *vs.* M. W. P. Co., 38 Me., 343.
Reuter *vs.* E. T. Co., 6 El. & Bl., 351.
S. C. 37 Eng. L. & Eq., 189.
School District *vs.* Richardson, 23 Pick., 62.
Charitable Ass'n *vs.* Baldwin, 1 Met., 359.

So far as I know, there is not a case, or a principle, which would tend to place the rights of this mortgagor to the earnings of this corporation on any different footing, because they were originally expended by the treasurer without any formal vote, but with the knowledge and assent of the officers and stockholders who had lawful right to control them, and with their subsequent formal ratification by vote, from what those rights of the mortgagor would have been, if the same expenditures had been originally authorized by formal legal votes of the directors and stockholders.

There is another view of this claim of the complainant to have the earnings of the corporation taken into this account *as if* they had been dividends duly declared by its authorized officers, which seems to me decisive against the claim.

I.—The duty resting on a corporation to declare dividends of its earnings is indefinite and discretionary in its nature, due in no sense to any particular member of the corporation, but only to the community of members, for the performance of which no promise can be impelled in favor of any particular member, and so long as the managers of the corporation act fairly in the exercise of this discretion, courts cannot interfere to control them.

Jackson *vs.* N. P. Road, 2 Vroom (N. J.), 279.
Rex *vs.* B'k of England, 2 B. & Ald., 620.
Ely *vs.* Sprague (N. Y. Vice Ch.), Clarke, 301.
State *vs.* B'k of Louisa., 645.

II.—In the language of the Supreme Court of Massachusetts—

" The acquisitions of banks, and other similar corporations, " are mere incidents of the capital stock, and *undistinguishable* " and *inseparable from it* till set apart by the declaration of a " dividend by its authorized officers."

Foote App'l't r. 22 Pick., 304.

" The earnings of a railroad corporation remain the property " of the company as its other property till the directors declare " a dividend. A shareholder *has no title to them* prior to a " dividend being declared."

Minot *vs.* Payne, 99 Mass. R., 108.

Now, the facts are :

I.—That no dividend was declared, and the earnings remained part of the property of the company.

II.—That the discretion of the directors of the company was *de facto* and in good faith exercised not to divide the earnings, but to invest them in improving the property of the company.

III.—That in good faith all the earnings were so invested.

IV.—That the complainant insists on the right of the mortgagor to become absolute owner of the stock in question, and thereby to become beneficially owner of the *pro rata* part of all the improvements purchased with these earnings.

And also that one-half of these earnings of the corporation should be deemed to have become *her property* without inquiry how much they were enhanced by these very expenditures, and without reference to the facts that the discretion of the directors and managers negatived a dividend and affirmed these expenditures, and that the stockholders of the corporation, in legal meeting assembled, did, by a legal majority, even reckoning all votes legally belonging to this stock in question to have been in the negative, ratified these expenditures, and that the directors, being duly assembled, also ratified the same.

And that whether these expenditures were legally made, or duly and legally ratified, or not, beyond all question no dividend was ever declared out of these earnings, and this stock never became entitled to any particular sum or sums of money

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And that whether these expenditures were legally made, or duly and legally ratified, or not, beyond all question no dividend was ever declared out of these earnings, and this stock never became entitled to any particular sum or sums of money

by reason of any dividend; but the same always continued "incidents of the capital stock, and undistinguishable and inseparable from it."

22 Pick., 304.

It is submitted that such a claim cannot be taken into this account by the master.

It is also submitted that the master should not have made any such report of earnings and investments as is requested by complainant's counsel.

I.—Because he is directed to take and state an account, and not to report specially any facts, either in the alternative or otherwise.

II.—Because a naked statement of the earnings and expenditures, unaccompanied with any other facts, would not present any foundation of fact on which the court could safely and legally rest any adjudication without injustice to the defendants.

That all the facts bearing on the making of these expenditures, their good faith, their original authorization, their ratification, their effect, and the extent of their effect in enhancing the earnings and in increasing the value of the property, are as essential as a statement of the earnings and expenditures; and that the master is neither required nor authorized to make such a report. He is to state an account.

III.—Because the nature of the claim is not one which the master can consider. In its nature it is not the assertion of a title to any particular sum or sums of money, which legally became attached to the stock in question, and which the mortgagees were guilty of wilful default or neglect in failing to receive; but it is a claim against the corporation or its directors personally for mismanagement of its affairs, by reason of which the complainant was damnified, *because dividends were not declared and so were not annexed to this stock*; and this claim is not the subject of an account under this bill. Such a claim from its very nature is not a claim to the earnings of the corporation. According to the authorities cited, a stockholder can have no such claim. It is a claim for such damages as have been sustained by the mismanagement of the affairs of

the corporation. When the complainant shall have become the owner of this stock by paying what is charged thereon, if her property has been illegally injured by mismanagement she may have her remedy.

To turn this bill into an inquiry whether the directors and managers of this corporation had been guilty of *an abuse of their trust as directors* by not making dividends, and how much, having just reference to all the circumstances of the corporation and its business, they were legally bound to divide, and what would have been the practical effect of their so dividing instead of expending, as they did expend, for the improvement of the property of the corporation, and how much, on the whole, the complainant was injured, if at all, would be a great departure from the scope and objects and nature of such a bill.

The bill and the decree under it bring in question the action of Chapin, the mortgagee—possibly also the actiod of those who were *cestuis que trustent* under him, so far as they executed any powers or had any duties as *creditors under that mortgage.*

To inquire what were their powers and duties as *managers of the corporation* and as its stockholders in their own rights, wholly aside from their powers or duties under the mortgage, and whether their action in their own rights and powers and in the management of the corporation had amounted to a breach of trust toward the stockholders, and how much the complainant, as one of the stockholders, had been injured by such breach of trust, would be wholly unauthorized by the bill or the decree.

The treasurer, the directors, and the corporation hav e aclear right to have the particular facts relied on to show breaches of their trust, and the extent and effects of such breaches set forth in a bill, with opportunity to answer and to have a regular investigation, according to the course and practice of the court.

Certain suggestions appear in the record not very material, but which may deserve notice.

1. IT IS SAID THAT THE COMPANY MADE AN UNFOUNDED CLAIM FOR DAMAGES.

But it clearly appears that the mill was not completed ac-

cording to contract. That heavy damages were sustained by this failure to perform his contract on the part of the complainant.

That the claim was made in good faith and supported by evidence.

That it was not found by the master to be a PROPER ITEM OF ACCOUNT, does not show that it was a groundless claim.

See the answer, Rec., p. 24.

Joseph Lea, In. 5, 6, Rec. p. 66, whose testimony upon this point is confirmed by that of Hoyt, Josiah Chapin, Geo. W. Chapin and L. B. Frieze.

It is not worth while to dwell upon an allegation not supported by any evidence fully denied by the answer, disproved by the evidence of all parties who know anything upon the subject, and not which relied upon as any ground of relief in this case.

2. IT IS ALLEGED THAT PREVIOUS ATTEMPTS AT SETTLEMENT AND TO RAISE MONEY UPON HIS PROPERTY BY GENERAL JAMES HAD BEEN DEFEATED BY REFUSAL TO RENDER ACCOUNTS, &C.

This is denied by the answer (Rec., p. 24) and disproved by the evidence of all the persons who knew anything about it.

The attempt at settlement failed, because the company WOULD NOT ACCEPT A PROPOSITION MADE BY GENERAL JAMES.

See deposition of Jos. Lea, In. 9, Rec., p. 67.
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The attempt to raise money failed, not because the company refused to render or exhibit accounts, but because General James did not choose to take the party who was expected to furnish the money to the place at which and the party from whom could be furnished. He enquired at the mill of a person who had no means of giving information, and did not enquire at the office of the company and of the treasurer where and in whose

custody the books were from which alone the desired information could be obtained.

See dep. Hamlin, Blake, 5 In. and 5 Cr. In., Rec., p. 55.

Dep. Geo. F. Wilson, 11 In., Rec. p. 47.

From this testimony produced by the complainant, it clearly appeared.

(1.) That Mr. Blake was informed that he could not have the information at the mill.

(2.) That he did not pursue the inquiry anywhere else.

(3.) That if he had gone to the proper source of information he would have ascertained that the statement which he says Gen. James made to him was "incorrect and untrue." HE DID NOT THEN OWN AND NEVER DID OWN ONE-HALF OF THE CAPITAL STOCK OF THE COMPANY.

3. IT IS SUGGESTED THAT THE TREASURER confesses UNDER OATH THAT THE STATEMENT WHICH HE HAD FURNISHED TO THE ASSIGNEE, AND WHICH WAS AND IS THE BASIS OF THE SETTLEMENT, WAS TRANSCRIBED FROM A PRIVATE MEMORANDUM KEPT BY HIM.

This is a misapprehension of the evidence.

See dep. Geo. W. Chapin. In 17, 18, 19, 20 Rec., p. 389, and In 1 Rec., p. 388, and Cr. In. 25, 26, 27, 28, 29, 30 Rec., p. 394.

See also Chapin's explanation of his reason for keeping the copy of this paper in his private letter book.

Rec., p. 410., In. 27.

We have referred to this evidence in another part of this brief, where the evidence is collected to show that the statement is correct, but we deem it proper to refer to it here for this reason, to correct the impression that the motive for keeping private the condition of the company had something to do with the deception of Frieze, whereas it was to PRESERVE

THE CREDIT OF THE COMPANY and protect the interest of the stockholders, GEN. JAMES INCLUDED.

4. IT IS SUGGESTED THAT THE ASSIGNEE HAD A RIGHT TO CONSIDER THE STATEMENT AS OFFICIAL.

In a *technical* sense this is not so. He had then recently been informed that it was difficult to make up a statement such as he wanted, on account of THE NECESSITY OF ESTIMATING VALUES, &C.

An official trial balance would have furnished him with no information as to what he wanted to know, THE ACTUAL CONDITION OF THE COMPANY.

But, in a SUBSTANTIAL sense, it was an OFFICIAL statement by the treasurer of the ACTUAL CONDITION OF THE COMPANY, such as he was accustomed to send annually to the directors, and such as alone would furnish them any valuable information.

Testimony of Geo. W. Chapin.
Cr. I., 45, 46, 47, 48, 49, rec. p. 395; and In., 30, rec. p. 410.

5. IT IS SUGGESTED THAT THE STATEMENT WAS FALSELY REPRESENTED AS A COPY FROM THE BOOKS.

This is not a perfectly accurate expression.

The treasurer explains what he meant by it.

In. 29, Rec. 410.

"I meant that it was made up from the accounts on the books."

We submit that this is its proper interpretation. Certainly, no person having any acquaintance with book-keeping would have been likely to understand it in any other way.

But of what consequence is the meaning of this phrase, or how it was understood, if it was a CORRECT AND TRUE REPRESENTATION OF THE ACTUAL CONDITION OF THE COMPANY AT THE TIME?

WINGATE HAYES,
ABRAHAM PAYNE,
WM. ALLEN BUTLER,
WM. M. EVARTS.
Of Counsel.

United States Supreme Court.

OCTOBER TERM, 1876.

No. 120.

THE ATLANTIC DE LAINE COMPANY et als., Defendants and Appellants,

vs.

LUCINDA JAMES, Administratrix of Charles T. James, Complainant and Appellee.

APPELLANTS' BRIEF IN REPLY.

WINGATE HAYES,
ABRAHAM PAYNE,
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National Republican Printing House, Washington, D. C.

U. S. Supreme Court.

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No. 120.

APPELLANTS' BRIEF IN REPLY.

The record in this cause exhibits the fact, that after the entry of the final decree of the U. S. Circuit Court for the District of Rhode Island, in favor of the complainant, February 19, 1874, and pending the appeal therefrom to this court, the Atlantic DeLaine Company, the principal defendant, was adjudged bankrupt; and that on April 21, 1874, Robert E. Northam was duly appointed a trustee of its property for the benefit of its creditors. (*See final decree and notice of appeal therefrom, Rec., p. 510, fol. 796; Certif. of Clerk U. S. District Court in Bankruptcy, p. 578, fol. 819.*)

Creditors, to a very large amount, of the Atlantic DeLaine Company are thus directly interested in the determination of this appeal, which involves the validity of a claim against the bankrupt corporation, amounting, with interest, to over $800,000. On behalf of the largest in amount of these creditors, as well as on behalf of the appellants generally, and

in reply to the brief filed by the learned counsel for the appellee, this additional brief is respectfully submitted.

As the case now stands, the contention is between opposing claimants against the assets of the bankrupt corporation. This court is asked to affirm the decree below, by which the estate in the hands of the trustee in bankruptcy has been subjected to the claim of the complainant, on the ground of the supposed fraud alleged in the bill. If the decree shall be affirmed, the consequences of this supposed fraud will be visited, not on the corporation or its shareholders, but on the body of its honest creditors. To what extent an affirmance of the decree may enure to the personal benefit of the appellee, after providing out of the fund diverted from the general creditors of the corporation, for the satisfaction of the claims of the individual creditors of the original complainant, as directed by the decree, (*see Decree, Rec., p. 509, fol. 795,*) and for the expenses of a litigation conducted on behalf of a confessedly insolvent suitor, during a period of over seventeen years, is not disclosed by the proofs. Enough, however, is disclosed to show that the enormous sum decreed to the complainant is, ostensibly, if not really, awarded to the legal representative of one of the original shareholders of the bankrupt corporation, who, on the ground of a fraud practised upon him by the corporation of which he was himself a member, has come to be reinstated in his right as respects all its property and profits during its entire existence, free from any contributing liability for any of its losses, and who, upon this footing of special privilege and immunity, is permitted to follow the estate of the corporation into the bankrupt court to make good his restored rights as a stockholder, by participating in the distribution of the property as a creditor.

This court will certainly not give its aid to a marshalling of assets so exceptional and anomalous, unless equity and good conscience plainly require such a stretch of its power. While the new incident of the bankruptcy of the corporation

does not alter the facts of the case, it furnishes an additional reason for the most careful scrutiny of those facts by the court. The bankruptcy of the corporation must, from its financial situation, as disclosed by the evidence, have necessarily followed the enforcement of the decree in this cause, had it not been hastened and precipitated by the commercial disasters common to the community at large.

There is no equity in the case which should impose on the creditors the hardship of sharing with an original stockholder in the distribution of the corporate estate.

I.—The bill in this cause was filed by the original complainant, March 1, 1859, to set aside, for fraud, the releases dated March 2, 1853, by which a final settlement between his assignee and the Atlantic DeLaine Company was concluded.

An obvious, and, as we submit, a fatal defect of the complainant's case is his tardy assertion of his supposed rights and the deliberate postponement of the execution of his threats to enforce them, amounting not merely to laches but to a want of good faith which should deprive him of any standing in a court of equity. In this case there can be no application of the undisputed and salutary doctrine that, in equity, mere lapse of time will not destroy or defeat the claim of an honest suitor who has been the victim of a fraud, the successful concealment of which has only aggravated the wrong inflicted upon him. This is the familiar principle recognized and applied in the cases cited on page 35 of the appellee's brief, and for which authorities are hardly needed in this court. But the complainant here is not in a position to invoke this principle. He took his ground deliberately, and immediately after the execution of the releases which he seeks to avoid, perhaps before their delivery, and privately declared his purpose not to be bound by the settlement. Parkhurst, his

principal and most insistent witness, says "he (James) returned a few days after the settlement was made, and I had a conversation with him about it. He said * * he did not consider himself bound by it, and that if he lived he would rip it up at some future time. He utterly repudiated it." (*Parkhurst, Rec., p. 38, fol. 63, ans. to int. 26.*)

This was a secret and confidential declaration, not made even to Holmes, his personal friend, who had bought in his homestead, and who, as Frieze wrote him on the evening of the sale, was, with a single exception, the only man "that dared to stand by and face the music" in his behalf, and who had been the most active promoter of the settlement. Holmes testified: "I saw him (complainant) frequently after the settlement on his return from Washington, and conversed about his business affairs. He said nothing about the settlement. *He never made any complaint about it to me.*" (*Holmes, Rec., p. 79, fol. 129, ans. to int. 6.*)

The concealment from Holmes and the cotemporaneous avowal to Parkhurst, of his purpose to attack the settlement and to "rip it up at some future time," must effectually shut out the complainant from the class of innocent victims, ignorant of their rights and remedies, to whom equity is slow to impute laches, and against whom statutes of limitations are no bar. James fixed his own time, and bounded the period during which he would sleep on his supposed rights by the limit of six years from the accruing of the cause of action, fixed by the statute for bringing a common law action on the case for deceit. (*See Gen. Stats. of R. I., Ed. 1872, p. 226, § 3.*) On the last day of this self-selected term, by the very choice of which he confessed that his cause of action accrued at the time the settlement was made, and was not based on any after discovery of fraud, his bill was filed. It was consistently silent as to any pretence of after discovery. The bill charges fraud and deceit, but contains no averment to show that the complainant was not as fully informed as to the alleged fraud and deceit

at the beginning, as at the end of the six years of limitation during which he chose to let his claim lie dormant and grow stale. Nor is there a syllable of evidence in the case to show that at any point of time during the six years the complainant was in any other or different attitude, as respects his knowledge or available means of knowledge of the facts, from that occupied by him at the time of the settlement.

The rule of equity which requires a party who seeks to impeach and undo a transaction on the ground of fraud, to act promptly when the fraud is known or suspected, and which forbids him to sleep on his rights, is equally independent of the statute of limitations, as the correlative rule which protects innocent parties from the consequences of inaction while ignorant of their rights. With the knowledge or means of knowledge of the supposed fraud time begins to run. Acquiescence with knowledge is a bar. "The law of courts of equity, independently of any positive legislative limitation, is that it will not entertain stale demands." (*Hovenden* v. *Annesley*, 2 Sch. & Lef., 637, 638.) "Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are lacking the court is passive and does nothing." (*Smith* v. *Clay*, 3 Bro., Ch. R. 610, *note; Piatt* v. *Vattier*, 9 Pet., 405, *and cases cited by* STORY J., p. 417.)

Now, it is perfectly plain that there was no conceivable ground on which to "rip up" the settlement, except the ground alleged in the bill—that the statement of the condition of the company was false for undervaluation, and that James' interest had been released for an inadequate consideration. "Material charge of the bill of complaint is that the statement furnished was incorrect and untrue," &c. (*Opinion of the court, Rec., p. 214, fol. 223, c.*) If the statement was true, James could not complain, and his bill must be dismissed. If the statement was false, and such falsity furnished the sole ground for repudiating the settlement, and he did repudiate it, and declared that he would attack it, then the obligation was

fastened upon him by the plain rule of equity to attack it at once. He could not speculate with his cause of action, and lie by for six years, so as to claim exemption from all the risks of a stockholder, if he was still interested in the corporate property, and yet claim the benefit of any period of transient or exceptional prosperity which his associates might enjoy. He is estopped to exhaust the investment and profits of subsequent transactions and subsequent owners in a course of dealing taken in reliance on the accomplished and public settlement.

That he meant to take these chances is shown by his prompt action when the six years were about to expire. Had he slept upon his rights through ignorance, he might have had relief without reference to the statute of limitations. But he was too vigilant a sleeper.

II.—The case is not one of mere acquiescence and want of good faith and reasonable diligence. The situation of the parties and their respective acts and dealings were such as to deprive the complainant of any real ground, either for his threats to destroy the settlement, or for his appeal to a Court of Equity to aid him in giving effect to those threats.

James was no novice as respects the rights and equities of contractors. The Record shows that, in company with leading and wealthy commission houses, he had undertaken an enterprise which, measured by the scale of manufacturing and commercial operations existing in 1853, was one of very extensive proportions. The contract itself is evidence of his experience and capacity. The schedule of his assets, produced by Frieze, his assignee, consisted chiefly of stocks in manufacturing corporations. (*See Schedule A, Rec., p. 150, fol. 237, containing list of stocks, "Saunders' mill cotton stock, Rock-*

port steam-mill stock, Montauk Manufacturing Company stock, Connestoga steam-mill stock, &c., &c." He was, it also appears, a Senator of the United States from Rhode Island. The public utterances of a member of the legislative department of the federal government may properly be referred to when his legal representative seeks relief on behalf of his estate in this co-ordinate tribunal, and it is not out of place to say that the present complainants' intestate was conspicious in the Senate for his successful efforts on behalf of contractors. (*See speech on bill for relief of contractors, N. Y. Custom-house, 1853, Cong. Globe, vol. 26, p. 370. See, also, speech against investigation of Sloo contract for transportation of mails in ocean steamers, Ib. p. 1086, and in favor of additional compensation to Collins' line of steamers. Ib. vol. 24, Part 2, p. 1260.*) Added to this large practical experience, and to his familiarity with legislation as applied to contracts, was the fact that he had, by loans obtained from his associates, and by his assignment to Frieze for the benefit of his creditors, finally engaged all of his property in this single project, so that at the end of his term in the Senate, his public duties having terminated, and his estate being in the hands of an assignee, he had every motive and inducement and opportunity to give his undivided attention to whatever interest he had or supposed he had in connection with the Atlantic DeLaine Company and its property.

The settlement was not completed by the exchange of the releases until March 10, 1853. The Senate adjourned March 4, 1853. James had returned to Providence. He had been in full communication with Frieze by letter and telegraph. (*Correspondence, Rec., pp. 469–474, Frieze, p. 124, fol. 197, ans. to int. 14.*) He was therefore on the spot, cognizant of what had just been done, and of the way in which it had been done, and of all the facts of the situation, and he was on the alert to protect his interests. If Parkhurst is to be believed, he was indignant, and his determination not to be bound by the settlement reached the extreme of "utter repudiation." The "statement" by Chapin was the prominent

fact in the settlement. James could not repudiate the settlement without falsifying the statement. And if he desired to do this the way was open. One ground on which it is now sought to be impeached is the item "Cost of real estate, cassimere department, and amount paid Chs. T. James' contract account, $310,006.40," an undervaluation according to complainant's claim and the appellees' brief, (*see pp. 22–24,*) for not including James' claim for extra work, amounting to over $79,000, and balance due on his contract beyond payments made him. But this matter was patent on its face, and the facts were as fully open to James as to the company. His claim for extra work was wholly and peculiarly in his knowledge, and so was the state of his own account, and the amount of any balance claimed by him, and as to this he stood on an equal if not superior footing of knowledge. The statement did not attempt to give anything in this item except actual cost and payments to January 1st, 1853, neither of which could possibly embrace the claim for extra work and the payments not made. As to this item, clearly there could be no pretense or claim of fraud or *concealment* in the statement. It is demonstrable that such a claim cannot fairly be made against any other item, but at present we confine the remark to the cost of the mill, &c. If James intended to object to the settlement, because his extra work and the balance due on his contract were not included in the cost of the property, the whole basis of such a claim was in his own hands and in his own books, and he was bound to make his claim on the information he possessed. More than this; if he stood on this item as erroneous or impeachable from the knowledge he possessed, he was bound to use not only the information he controlled in respect to it, but the means of knowledge accessible to him as to every other item, and to test the accuracy of the statement in all its parts.

The statement had not been volunteered, nor was the relation of the parties one of confidence. On the contrary, Frieze, as James' assignee, had, sometime before, commenced proceed

ings in the Supreme Court of Rhode Island against Chapin and the Atlantic DeLaine Company, on the ground that they were *then* (in February, 1853) conspiring to defraud him and his assignee, by refusing to furnish an account of the business and affairs of the company, and had charged "that the refusal to furnish an account was from a design to throw a cloud upon the value of the shares of the stock of the complainant," and that they "were aiming to obtain the property at much less than its fair value." (*Bill, Rec., p.* 5, *fols.* 9, 10; *Petition, p.* 451, *fol.* 694.)

It was under the compulsion of these hostile proceedings, based on the alleged fraudulent design of the company and Chapin to depreciate the value of the corporate property, that the statement was furnished. Its scrutiny by James was the scrutiny of a party, who, besides his special competency to protect himself, and his full knowledge as to all the leading facts involved in it, was then, by his representative, a complainant charging fraud in respect to the very question of value with which the statement dealt. Under these circumstances, it does not lie in James' mouth to say that he was deceived, to his prejudice, by anything in the statement. Ordinary vigilance and attention would at once have tested the truth or falsehood of the statement, and to the application of this test, his own attitude and acts compelled him. No case can be found where a party so situated is indulged by a Court of Equity in a deliberate postponement of inquiry or of the effort at redress. It is the rule of equity as well as of law that where the truth or falsity of the representations complained of might have been discovered by ordinary diligence, it is the party's own folly if he neglect to do so, and he is remediless thereafter. Mr. Justice STRONG states the rule cleary in *Fulton* v. *Hood*, 34 Penn., 365, p. 371: "A party who seeks relief from the obligation of his bond on the ground of actual fraud or misrepresentation, must establish that there was a false representation of a matter of substance important to his interests, and actually misleading him to his hurt. A

false affirmation of a matter resting in opinion, or even of a fact equally open to the knowledge or inquiry of both parties, is not available for any such purpose." And *see* 2 Parsons on Contracts, 773; 2 Story's Eq. Juris., 10th ed., 200–205, *and cases cited there.*

The rule is of special force and application in a case where the party has already charged fraud and afterwards makes a settlement.

See *Adams* vs. *Sage*, 28 N. Y., 103.
Parsons, Adr., vs. *Hughes*, 9 Pai., 591.

III.—The alleged right of a subsequent attaching creditor to demand an assignment of the first mortgage upon the payment of the amount due thereon (*Appellee's Brief, p.* 18) is not supported by any citation of statute or authority. It is immaterial whether such right existed or not, as the facts and the law on this subject were equally in the knowledge of James and of the company, and therefore no fraud or concealment can be alleged in respect to this part of the transaction.

Chapin acted under advice of counsel in declining to assign the mortgages, and in offering to accept the amount of the mortgage debt and cancel the mortgages (*Chapin, Rec., p.* 160, *fol.* 250, *ans. to int.* 20.) There was no privity between James and the subsequent incumbrancer, and nothing can be claimed from the tender made by the incumbrancer.

IV.—The appellee claims that the statement furnished by Chapin was false, in purporting to be a true copy from the books (*see Brief for appellee, pp.* 18–21.) This is an objection

urged against the entire statement. Apparent weight is given to it by the erroneous assumption of the court below, that the statement, by the force of the words, "a true copy from the books," was tendered to and received by the assignee as an "official account," made in conformity with the provisions of the by-laws of the company, whereas it came from the private letter book of the treasurer (*see Opinion, Rec., p.* 481, *fols.* 741, 742.)

If the statement was in fact substantially true, it is of no real consequence whether it was literally a copy from the books or not. But as this technical objection has been magnified into undue proportions under a mistaken view of the evidence, it is necessary to look at it in the light of the facts.

By-Law No. 6 prescribed the duties of the treasurer (*By-Laws, Rec., p.* 444, *fol.* 683.) It required him, "as general factor or agent, to have the care and oversight of the affairs of the corporation," and charged him with certain specific duties, among which was the following: "He shall keep his account as treasurer in a correct manner, and the same, with the accounts of their agents, he shall render to the directors, semi-annually, and at all other times when required; and at each annual meeting he shall exhibit his account to the corporation." This is the exact requirement of By-Law No. 6, and the whole of it. It is manifest that the learned counsel for the appellee, when he penned the paragraph on page 21 of his brief, "the by-laws of the company required a semi-annual statement of the condition of the company to be given to the directors," could not have had the by-law before him, and that the court below, in the statement in the opinion (*fol.* 741,) it "was made the duty of the treasurer to render to the directors, semi-annually, an account of the affairs of the company," must have been misled by the brief then before it, or have misapprehended the terms of the by-laws, which, in fact, contain no such direction.

The by-laws required the directors to render an account of their management at each annual meeting, and at the same time the treasurer was to exhibit "his account," and, semi-annually, he was to render "his account" to the directors. The "treasurer's account," as every one of any business experience knows, is an account of the receipts and expenditures of that officer, and nothing else. It is not a statement of the condition of the company, except as to its cash receipts, and outlays. There is not a word in the by-laws putting upon the treasurer of the Atlantic DeLaine Company the duty of making up an annual or semi-annual "statement of the condition of the company." In practice, Chapin, as treasurer, was in the habit, after the company had gone into operation, of sending a statement to the directors (not semi-annually, as his "account," but annually, as the basis of, or in place of, the annual statement of management required from the directors), similar in form to that furnished by him to Frieze. (*Chapin, Rec., p.* 89, *fol.* 144, *ans. to int.* 25, *p.* 240, *fol*, 362.) Chapin was first examined as a witness in March, 1861, eight years after the transaction in question, and in speaking of these annual statements he referred to his practice during the whole period of his treasureship, as he afterward explained (*Chapin, Rec., p.* 410, *fol.* 635, *int.* 30.) An attempt is made in the appellee's brief (*p.* 21, *at top of page*) to discredit Chapin, because, in naming the directors to whom it was his habit to send statements at the time his first deposition was taken, in 1861, he included James, who ceased to be a director in 1853. But Chapin was literally correct. He said the statement was sent to James and the other directors (*Rec., fol.* 362,) and afterwards he said it was so sent at the time he gave his deposition in 1861, "and for some time previous," &c., (*fol.* 631.) 1853 is certainly previous to 1861, and he nowhere testified that he sent a statement to any director after he ceased to act as a director.

The statements so sent by Chapin were summaries of the condition of the company, not as exhibited in the treasurer's account, but as shown by the various accounts on the books,

and, so far as necessary, estimated from his knowledge of the business. There is no evidence in the case that any "official account" by the treasurer, of the affairs of the company, such as the court below assumed to have been called for by the by-laws, or to have been in the contemplation of the parties, ever had any existence, or was any part of the system of the corporate business.

This whole notion that there was a falsehood in calling Chapin's statement a "true copy from the books," is, in plain terms, an exaggerated misconception.

The evidence shows that the Atlantic DeLaine Company, like all other manufacturing corporations, had on hand its stock of raw material, its stock of goods in process of manufacture, and in every stage of manufacture, its finished fabrics in the mill and in transit, and in the hands of agents for sale. Chapin told Frieze at the outset (*Parkhurst, Rec., p.* 37, *fol.* 60; *ans. to int.* 20,) when the question of a statement of the affairs of the company was first broached, "I don't know that I can give you anything that will be satisfactory; that it would be a great deal of trouble to make out one; that they had a large quantity of goods on hand, the price of which was fluctuating," &c., &c. This was the exact truth, and it must be borne in mind, as the key to much that is made to appear as confused and conflicting in this case, that the books and accounts of such a corporation never exhibit its exact condition. That condition must needs depend on the daily, and sometimes hourly, changes in the markets and on the general state of trade. The figures on the books represent something wholly distinct and different from what may be the actual situation and condition of the company's affairs. A true statement of the accounts might show it to be solvent when it was insolvent, by exhibiting credit balances of account representing assets and property at their actual cost to the company, but utterly worthless in fact, while a true statement of the condition of the com-

pany, though varying from the figures of the book accounts, would be still "a true copy from the books,' because capable of verification by the books, exactly, as to balances stated and approximately, as to estimates made. In other words, a true statement of the condition of any such corporation must be based, to a certain extent, on estimates of actual value and not on the apparent value, as shown by the accounts. This is daily illustrated by the difference between the value of stocks of corporations "on the books" and the value of the same stocks in the market. The books are the continuous record and history of exact financial transactions; the result of those transactions may never appear in the books.

The criticism of the statement, on the grouud that it was not a true copy for the books, would, therefore, seem to be prompted either by an ignorance of the real function which the books of a manufacturing corporation perform, or by a disingenuous view of the relation between the parties respectively seeking and giving the information as to the condition of the company at the time the statement was made. An exact "trial balance" of any corporation would be a true copy from the books, but to a person desiring to acquaint himself with the real condition of the company's affairs, it would be only an index and starting point in the inquiry. If, then, Frieze, as the assignee of James, was really desirous of such information as would exhibit the true condition of the company and the value of James' interest, what he wanted was not the "treasurer's account" referred to in the by-laws, or literal extracts from the books, not even the trial balance, but a statement of actual debts and actual assets, a true copy from the books where the books showed actual values, and as to items which the books did not and could not show in the form of ascertained balances, an estimate of values capable of verification from the whole body of the accounts.

V.—The "statement" was an honest one. The real condition of the company would not have justified a more favorable exhibit. This being the case, if it was furnished with good intent, and was true, no taint of fraud attaches to it. The vital question is, what was the actual condition of the company?

Representations of the condition of corporations, especially of manufacturing and mining companies, made by Boards of Directors, trustees and officers to stockholders, creditors, and the public, by prospectus, annual statements, &c., have proved, in experience, to be misleading by overstatements and overestimates of property and values, rather than by under-statements and under-estimates. A new fraud has been created by a recent English Statute (*Companies' Act* 1867, § 38, Law Reps. Stats. at L., vol. 2, p. 1383) to guard shareholders against the omission from the prospectus of a corporation of facts essential to the true statement of the basis of organization; and the English Reports as well as our own are full of cases which illustrate the tendency to exaggerated estimates of corporate property.

Chapin was called upon by a legal proceeding to furnish a statement demanded on the avowed ground that it was necessary to enable outside parties to become bidders for the stock of the corporation at public sale, (*Parkhurst, Rec., p.* 26, *fol.* 59; *Petition p.* 251, *fol.* 694.) He gave what he declares under oath was an accurate statement, and the reason why it was not spread on the books of the company, but copied into his private letter book, is given by him at *fol.* 630. It was a view of the real condition of the company to which Frieze was entitled, but which it was not desirable to put under the eyes of the clerks in the employ of the company, whose real condition was not as prosperous as might have been supposed from appearances. Chapin might well infer from the acts of Frieze that his call for a statement was only a means of preventing a sale. This is not now left to infer-

ence. The letters of Frieze to James discloses that his whole programme was one of offensive warfare "to bring the company to terms." (*Frieze to James, Feb.* 23, 1853, Ex. X, *Rec., p.* 472, *fol.* 727.) "We think it advisable to keep on with our injunction matters. * * By keeping up a sham fire in that direction, we blind them as to our real motives. * * The injunction will not interrupt any other arrangements, as we can easily withdraw our action if we find it necessary to do so." (*Ib. p.* 472, *fol.* 726.) He procured an injunction, "frightened off buyers" at the sale of the real estate, "played bluff during the whole sale," frightened off a bidder "on a quarrelsome title." (*Ib.*, Feb. 26, 1873, *Rec., p.* 473, *fols.* 727, 728.) "The next fight is for the DeLaine Company stock, which is now hung up till a statement can be made, and it must be very satisfactory to suit me, otherwise I shall apply for an injunction as a stockholder, &c.' (*Ib., p.* 473, *fol.* 729.)

The condition of the company, as known to Chapin when he took his pen in hand to prepare the statement under this pressure of instant and vigorous attack, was as follows:

Capital.—Of its proposed capital stock of $300,000, in shares of $1,000 each, only 283 shares had been subscribed, and not 287, as erroneously stated in the bill (*Bill, Rec., p. 2, fol. 5; but see appellee's brief, pp. 2, 3, where the correct amount is given.*) James had paid on his subscription for 150 shares only $113,000, the amount credited to him for instalments due on his contract, which went to pay for his stock (Chapin, *Rec., p. 155, fol. 243, ans. to int. 4, James' stock account, p. 171, fol. 265;*) and one subscribing firm had made default in payment, so that of the entire stock subscribed, the company had received only $237,495.33 (*see Ex. Y, Rec., pp. 198, 199, fol. 303.*) This sum constituted a debit item of cash against the company.

Debts.—The company had outstanding bills and notes, included under the general head of "Bills payable," to the amount of $410,615.39. Of these bills payable the bulk were for supplies and machinery. (*See* Ex. V, *Rec., p. 196, fols. 300, 302*). The company also owed to its agents for advances against shipments of goods consigned to them for sale for the account of the company, $90,026.19 (Ex. W, *Rec., p. 198, fol. 302.*) The margin of market value of the goods so consigned, beyond the amount of the advances, whatever that margin might prove to be after sales made and final settlement of accounts, was all the property the company had in those consigned goods, which were the primary fund in the hands of the consignees for the repayment to them of their advances. But the company, with the fatal facility for debt common to corporations, had been driven to the expedient of drawing on its agents, not against goods, but for its accommodation, and had procured additional advances from them of $76,000 in their acceptances, to provide for which the company issued its promissory notes for the like amount, which are included in the general item of "bills payable," making up the aggregate of $410,615.39. The $76,000 were, as a very slight acquaintance with book-keeping and the science of borrowing, will demonstrate, actual maturing liabilities of the company, and properly classed with its bills payable. The acceptances of the agents for the company's accommodation were equivalent to cash advances; the company's notes were given for them, constituting as valid obligations as if they had received cash. It is wholly immaterial whether, in the end, they were paid out of the proceeds of goods in the agents hands, or out of the general funds of the company. They were debts, and if the company had, instead of stating its affairs, gone into liquidation, it would have had to pay the whole $410,615.39 out of proceeds of sales of goods, or in some other way, before it would have extinguished its bills payable. But the margin of the goods in the hands of the agents beyond their advances of $90,026.19 against the goods was wholly inade-

quate to meet the accommodation acceptances (*see Appellant's brief, p. 78;*) and irrespective of this the presence of the $76,000 notes in the statement, and their existence, did not in any manner affect the value of the goods. The goods are stated at their full value on the credit side, just as all the outstanding obligations of the company are stated at their full amount on the debit side.

In addition to the above debts the company owed on various open accounts $51,404.44. (*Ex. X, Rec., p. 198, fol. 303.*)

The total of debts and liabilities, January 1, 1853, was, therefore:

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital stock	237,495 53
	$789,541 55

Assets.—To meet these liabilities and to return the capital paid in, the company was possessed of cash and bills receivable, amounting to $13,584.92. (*Rec., pp. 199, 200, fol. 304.*) It was possessed of the mill which James, by his contract, had agreed to finish and put in working condition by August 1, but which was not completed until February 1, 1852. (*Master's Report, Rec., p. 358, fol. 541, agreed date with reference to credit of contract price.*) The company claimed that it had sustained damages by James' delay and failures, and this claim had been a matter of discussion by the stockholders and was known to James and his assignee. It was estimated at $50,000. (*Lea, Rec.. p. 66, fol. 108; ans. to int. 6; Josiah Chapin, p. 72, fol. 117; ans. to int. 5: Geo. W. Chapin, p. 86, fol. 139; ans. to int. 10; Hoyt, p. 130, fol. 206; ans to int. 6; Master's Rep., p. 357, fol. 539.*)

The delay and consequent damages were due to the insolvency of James, who failed with liabilities amounting to between $600,000 and $700,000, and assets which realized only $28,049.32. (*Frieze, Rec., p. 123, fol. 195; ans. to ints. 3, 4.*)

The inability of James' assignee to provide out of the wreck of his property any available means for completing the mill had compelled the company to advance all the money required to finish the building and supply the requisite machinery—and the amount actually paid for the entire mill property up to January 1, 1853, was $310,006.04, made up as follows:

The cost of the real estate ..... (*Ex.* "L," *Rec., p. 200, fol. 305.*)	$13,140 60
The cost of the cassimere department ..... (*Ex.* "V," *Rec., p. 193, fol. 295.*)	40,250 33
The payments to James on contract were to Dec. 31, 1852. ..... (*Ex.* "Q," *continued, Rec., p. 200, fol. 305.*)	256,615 11
Total	$310,006 04

A further asset was the balance of the account due from Frieze for advances to him, $53,314.77, (Ex. A. A., *Rec.*, pp. 202, 205, folios 307, 313,) and also due from sundry persons $2,061.38. (*Ex.* "Z," *continued, Rec., p. 201, fol. 306.*)

The remaining assets consisted of the wool, cotton, and other supplies at the mill, and the manufactured goods, delaines and cassimeres at the mill, and in the hands of the agents. James had previously induced the company to purchase a heavy stock of wool, amounting to about $600,000, which it was necessary to work up, to stop loss of interest, depreciation and sacrifice by forced sales. Owing to the delay in starting the mill, much of this wool had to be sold at prices below cost. (*Chapin, Rec., p. 158, fol. 247; ans. to int. 10; Lea, Rec., p. 67, fol. 108; ans. to int. 5.*)

The value and paying power of the stock of raw material and goods on hand was not ascertainable with exact accuracy, but the books and accounts showed the cost of wool, cotton, and supplies at the mill; and Chapin made, as he necessarily must, in order to give a true statement of the company's condition, an estimate of their value as cash. This estimate was not arbitrary, as claimed by appellee; it was from the books, and the method by which it was ascertained is given in appellants' brief on p. 68 *et seq.* It was, as it proved, an over-estimate, too favorable by far both as to the supplies and the goods. (*See Ex. C. C., Rec., p. 206, fol. 213; Chapin, Rec., p. 91, fol. 146. The over-estimate of wool, cotton, and supplies proved to be $6,943.24, and of goods on hand, as shown by the sales, $8,364.12, and see Appellants' Brief, p. 72.*)

Thus—

Against an aggregate of liabilities of		$788,541 55
The company had assets:		
Cash and bills receivable	$13,584 92	
Real estate, mill, &c	310,006 40	
Due from Frieze	53,314 75	
Due from sundry persons	2,061 38	
Wool, cotton, and supplies at mill	190,692 17	
Delaines and cassimeres on hand	149,576 74	
Total		618,176 02
Deficiency		$70,365 53

But of these nominal assets, the fixed property of the company, as the whole history of manufacturing corporations will attest, was unavailable, notwithstanding its cost, to meet maturing liabilities, and, without a cash capital, or cash resources, it is manifest that the large indebtedness of the company would have made its stock valueless upon a liquidation of its affairs as they then stood. The testimony of Mr. Lea not only stands uncontradicted, but is borne out by the facts.

"At that time, (March, 1853,) the directors would gladly have sold James' stock and the whole concern for vastly less than it had cost them, as in April, 1853, the Atlantic Company authorized me to sell the entire property for a sum which would barely pay their debts, making the entire stock an almost total loss." (*Lea, Rec., p. 67, fol. 109; ans. to int. 15.*) Mr. Hoyt testified to the same effect: "The directors rendered the stock almost or quite worthless." (*Hoyt, Rec., p. 130, fol. 206.*)

If the above view of the real condition of the company is borne out by the facts, Chapin's statement, which corresponds with it, was as favorable as the truth would admit. He accompanied it with a proffer of any further information which Frieze might wish. (*Ex.* "F," *Rec., p. 96, fol. 153.*) Frieze was in a position to compel a discovery, if he had so desired, but the information was volunteered by Chapin.

VI.—The good faith of the statement is fully vindicated by the evidence. The complainant wholly failed to impeach it.

"The burden of proving the charge of fraud is on the complainant. Fraud cannot be presumed or inferred, without proof, in a court of equity, any more than in a court of law, and in both the rule is, that he who makes the charge must prove it." (*Per* CLIFFORD, J.; *Hager* v. *Thompson*, 1 Blk. 80, p. 91.) In a case where the complainant seeks to open a settled account on the ground of fraud, if a mistake is alleged, it "must be stated with precision and made apparent, so that the court may rectify it with a feeling of certainty that they are not committing another and perhaps greater mistake." (*Stearns* v. *Page*, 7 How., 819, p. 829.)

Aside from the alleged evidence of fraudulent intent in the expression "a true copy from the books," which has already been considered, (Point IV, *ante*, *p. 11*,) the objection that the cost of the mill was not fully stated, because items from James' books were not included, (also considered at p. 8, *ante*,) and the criticism as to the "bills payable," (see *ante*, p. 17,) the only other objections seriously urged by the appellee are to the items on the credit side of the statement relating to the "wool, cotton, and supplies," and the "delaines and cassimeres on hand." (*Appellees' Brief, pp. 24–26.*)

A discrepancy is claimed to exist between the figures relating to the above items in the statement and those derived from the trial balance. But the evidence showed that the trial balance dealt with general accounts, and the exact state of the separate account relating to any particular item embraced therein, was ascertained from other sources; thus the "DeLaine account," showing in the trial balance (*Ex.* H, *Rec.*, *p.* 442) a balance of $237,062.87, expressed the cost of the entire quantity of delaines manufactured, less the cash proceeds of sales, and so of the cassimere account. The actual quantity of goods on hand at the mill must be taken from the inventory, of which a true copy was produced, and which showed the result given in the statement.

See the explanation in detail, Appellant's brief, pp. 68–75.

Unless it is to be supposed that the inventory was fabricated for the purposes of this defense, there is no ground for any imputation against it. If it was not so fabricated, then the figures which it gives, taken in connection with the actual results of the sales, demonstrate the accuracy of the statement as to the value of the goods.

VII.—It is evident from the opinion of the court below, that the defendants were held amenable to the charge of fraud rather upon a first impression that an unfair advantage had been taken of the complainant which the further proofs and fuller investigation failed to remove, than from any specific acts of fraud or concealment ascertained and established from the evidence. No error or mistake in the statemeat has ever been pointed out by witness or counsel with sufficient clearness to make it the subject of judicial condemnation or sentence. In the opinion delivered after the first hearing, the court say, "Beyond question, that statement was inaccurate in large amounts and greatly to the prejudice of the original compiainant. Viewed in every aspect, it is the conclusion of the court not only that it was false, but that it was furnished with the intent to deceive and defraud by promoting a settlement prejudicial to the original complainant and more favorable to the respondent corporation than truth and justice would admit." (*Opinion, Rec., p.* 215, *fol.* 324.)

In the subsequent opinion, after the hearing on the proof taken before the master, the court say that "the new evidence convinces the court that the orignial decision was correct, and that the release executed by the assignee was properly set aside as having been obtained by fraudulent representations and concealment;" and it is then stated that it "was not an official account made by the company or its managers, and that it was not an account copied from any official statement of the affairs of the company in respect to its dealings with the original complainant," and that "it falsely purports to be a true copy from the books." The opinions add, "Items of large amount were included in the statement which do not appear on the books at all, and some of those which do appear are erroneous in large amounts and greatly to the prejudice of the original complainants. Viewed in every aspect it is the conclusion of the court not only that it was false, but that it was furnished with the

intent to deceive and defraud, &c." precisely as in the former opinion, as quoted above.

(*Opinion*, *Rec.*, *pp.* 480, 481, *fols.* 741, 742.)

The question whether the statement can fairly be condemned, or even criticised, on the ground that it was not a reproduction of accounts appearing on the books of the company, has already been fully considered. (*Ante*, *p. 11.*) If it was substantially correct, nothing else is of the slightest consequence. It did not purport to be an official document, except so far as Chapin, as treasurer, certified to its accuracy. If it was designedly false, it was of course vitiated by its falsity. If it was substantially true, its verity was not impaired by want of any official formality of certification, or of exact correspondence with the books.

Apart from the question of the official character of the statement, the general aspect of the transaction is thus made the basis of the judicial sentence below. Whether this is consonant with the fair inferences to be drawn from the facts; from the relative position of the parties, and from the state of the accounts and affairs of the company, is a question which, on this appeal, is an open one. The investigation made by Mr. Holmes, the friend and adviser of the original complainant, at the time of the settlement, satisfied him that the settlement was clearly for the claimant's interest. His investigation was not based solely on the statement. He testified as follows:

"From the books and accounts of the company with Mr. Frieze and Gen. James, I made up the annexed statement, marked "A," in order to see what James' interest would be worth. I estimated his stock to be worth seventy per cent. At that value, he would be left $2,574 in debt.

"With the information I obtained elsewhere from disinterested parties, as to the value of said stock, and seeing the company were heavily in debt, and ascertaining that the stock could not be sold for fifty cents of its par value, and finding there was no sale for it, under these circumstances I

advised Mr. Frieze to settle the whole matter. I had several conversations with Mr. Parkhurst in regard to the De-Laine Mill account. On first looking at the statement I did not understand it, and my impression was that the company had made some seventy thousand dollars, but, on a more particular examination, there was no difficulty in finding that they had lost a large amount of money."

(*Holmes' Rec., p. 79, fol. 128; ans. to ints. 3, 4, 5.*)

It is possible, of course, that complainant's trusted friend may have erred, and that the original complainant's stock may have been worth something more than the facts within his reach attested; but it is difficult to perceive how the statement which Chapin furnished could have been so greatly at variance with the result of Holmes' investigation. However this may be, it is not incumbent on the appellant to prove the absolute accuracy of the statement. "Viewed from every aspect" with an impartial scrutiny, and under the guiding principles of equity, the question is, whether the proof convicts the defendants of fraud. On such an arraignment a reasonable doubt is sufficient to acquit.

VIII.—The relief awarded to the complainant by the decree of the court below, is far beyond that prayed for by the bill, and was unwarranted and in excess of the power of the court. In no case could it exceed an award of a conveyance or transfer of the stock claimed to have been wrongfully acquired by the company, with any earnings received by the trustee, beyond the amount of the complainant's debt.

The bill, after charging the fraud complained of, contains an offer to pay all sums, which on a true statement of the account may be found due by complainant to George W. Chapin, as trustee, and to the corporation, *whenever they shall convey to him the stock and securities converted by them.* (*Bill,*

Rec., p. 7, *fol.* 12.) It then prays that the defendants be required to answer the bill; that the complainant's release may be declared void for fraud; that the corporation may be declared to hold the stock as trustees for complainant; that an account may be taken of the dealings between complainant and the corporation and Chapin, in his capacity, under said *contract* and otherwise; that complainant may be declared entitled to a conveyance and transfer of the 150 shares of capital stock, on payment of his debt, and for further relief. (*Bill, Rec., p.* 7, *fol.* 13.)

Copies of the releases against which relief is sought by the bill are annexed thereto, and marked "C" and "D." They are general releases, and recite the settlement of all claims held by the Atlantic DeLaine Company against James, or his assignee, and of all claims of James, or his assignee against the company, and also, of all claims on the part of the individual firms who were stockholders in the Atlantic DeLaine Company against James, and of his claims against them. Exhibit D contains the express recital that the Atlantic DeLaine Company accepted of the said Lyman B. Frieze, as assignee, as aforesaid, in full settlement of the balance of said claims due them, a conveyance of all the right, title and interest which the said James at the date of his said assignment, and which the said Lyman B. Frieze, as assignee of said James now has *in and to the capital stock* and property of said corporation." (*Ex. D, Rec, p.* 18, *fol.* 30.)

The release executed by Josiah Chapin and others, the individual stockholders referred to on appellee's brief, (*p.* 37,) in which they covenant not to sue James, and to look to the mortgaged security, &c., (*Rec., p.* 445, *fol.* 685,) was executed as a part of the whole settlement, and must be taken in connexion with the releases above referred to, and with the transfer of the 113 shares of stock by Frieze to the company. (*Transfer, Rec., p.* 445, *fol.* 684.)

There was no intention to keep the mortgage on the stock alive. On the contrary, by the transfer on the books of the company, the absolute ownership passed and the title was intended to be vested in the company as owners, by that transfer, and not as pledgees or morgagees, and the stock was so dealt with thereafter by the company; and the charge of the bill is that the company, as the result of the settlement, "obtained the stock." (*Bill, Rec., p.* 6, *fol.* 11.)

The mortgage debt being extinguished, the mortgage, which was only an incident to the debt, was also extinguished.

Adams on Eq., p. 110, marg. paging and cases in note, 6th Am. ed.
Merritt vs. *Bartholick*, 36 N. Y., 44.

But if the transaction was void for fraud, the plain equity of the complainant was to have it wholly rescinded, and to be placed in *statu quo* at the point where the fraud attached. All parties being remitted to their original positions, the transfer of the stock by Frieze to the company falls with every other part of the condemned transaction, and the relation of mortgagor and mortgagee is revived as between James and Chapin, as trustee for the creditors of James named in the mortgage. That relation never existed between James and Chapin, as treasurer of the company; nor did it ever exist between James and the company. It would be absurd to permit the fraud, which vitiates the entire transaction, to give validity to that part of it by which the stock was transferred to the company by Frieze, so as to substitute the corporation as the morgagee instead of Chapin.

The whole theory on which the company is sought to be turned into the mortgagee instead of Chapin, and charged as mortgagee in posession, is founded on the assumption that

Chapin, as trustee for the creditors interested under the mortgage, who are stockholders in the company, stands in no other estate or right than that of the company itself, and that equity will treat Chapin, the trustee, his *cestuis que trust*, and the corporation, as "having identity of knowledge and interest," and as "one and the same." (*See Appellee's Brief, pp. 36, 37.*)

In this view, the pledgor or mortgagor of stock in a corporation, if his pledge is made to a trustee for the benefit of several creditors, and such trustee happens to be an officer of the corporation, and such creditors are, with the exception of the debtor, all the stockholders therein, would hold a position as against creditors, and all persons dealing with the corporation which, in the event of fraud or mistake, entitling him to redeem what he had mortgaged, would not only be superior to that of stockholders, who had never encumbered their stock, but also to that of creditors, who had parted with their money. Under the plea of equity for the stockholder, the separate identity and responsibility of the corporation would be ignored, all the special statutory disabilities and limitations applicable to its dealings, and intended to prevent a confusion between its corporate acts and liabilities and those of its stockholders as individuals, would be destroyed, and the stockholder would be held to have an interest in the property superior to that of the corporation itself. To sustain the decree of the court below will be subversive of principles which lie at the foundation of the established rights and relations of corporations, both as to their stockholders and as to creditors dealing with them in good faith. Nothing is better settled than that the distinct identity of a corporation and of its stockholders is such that the stockholders can acquire no legal title in the corporate property except by a division. In the *Queen* v. *Arnaud*, 9 Ad. & El., N. S., 806, Lord DENMAN said: "The individual members of the corporation are, no doubt, interested, in one sense, in the property of the corporation, as they may derive individual bene-

fit from its increase, or loss from its destruction; but in no legal sense are the individuals the owners."

See, also, *Browne* v. *Collins*, L. R., 12 Eq. cases.
City of Utica v. *Churchill*, 33 N. Y., 228.
Hyatt v. *Allen*, 56 N. Y., 553.
Van Allen v. *The Assessors*, 3 Wall, 573, *and cases cited in Appellants' brief.*

The whole course of reasoning on the part of the appellee appears to be inapplicable to the facts of this case, because it proceeds upon the mistaken idea that the property of the corporation was, to the extent of the complainant's interest as a stockholder, *his estate*, whereas it was the estate of the corporation, in respect to which and its management he had the rights and equities of a stockholder, and nothing more.

The mortgage to Chapin could not have been made available to creditors of the corporation as a part of its assets, as it was only a mortgage of a stockholder's interest. It is difficult to see how the value of the mortgaged property could be enhanced, or its character changed, by the fact of the mortgage. Before it was mortgaged, it was the interest of James, as a stockholder, and after the mortgage, it remained the same interest, and now, if he is adjudged to have never parted with it, he is, by force of the decree, reinstated as a stockholder, and is entitled to nothing more than his stock on payment of the debt secured by its pledge, and to have its value *as stock* ascertained and awarded to him.

It has never been held that, on a conversion by wrongful sale or appropriation of stock pledged for a debt, the wrongdoer could be held liable at law for more than the market value of the stock at the time of such conversion, or within such further period as the local law might determine to be just. Nor in equity, could he be held for a greater obligation than to replace the stock with any actual dividends or earnings received, or to account for its value as stock to be ascer-

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

No. 120.

The Atlantic De Laine Company and another,

APPELLANTS,

v.

Lucinda James,

ADMINISTRATRIX OF CHARLES T. JAMES, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BRIEF FOR THE APPELLEE.

C. H. HILL, OF COUNSEL FOR THE APPELLEE.

BOSTON:
ALFRED MUDGE & SON, PRINTERS, 34 SCHOOL STREET.
1876.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

No. 120.

THE ATLANTIC DE LAINE COMPANY AND ANOTHER,

APPELLANTS,

v.

LUCINDA JAMES, *Administratrix*

OF CHARLES T. JAMES, *deceased.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF RHODE ISLAND.

BRIEF FOR THE APPELLEE.

This is a bill in equity, filed originally by Charles T. James, and revived by his administratrix, against the Atlantic De Laine Company, George W. Chapin and Lyman B. Frieze, to set aside for fraud a release of James's interest in the capital stock of the company, which had been mortgaged to Chapin as trustee, and for a reconveyance of the shares to the plaintiff, and for an account. The original bill was filed March 1st, 1859, and after the plaintiff's death, in October, 1862, the bill of revivor was filed Jan. 6, 1863.

The following is a history of the transactions out of which the controversy arose: —

On the 1st of January, 1851, a contract was executed between Charles T. James, of Providence, and Hill, Carpenter & Co. and George W. Chapin, as representing the Globe

Printing Company, of Providence, and certain dry goods commission houses in New York, Philadelphia, Boston, Hartford and Baltimore, for building a mill for the manufacture of mousselines de laine, at Olneysville, in the town of North Providence, Rhode Island.

This agreement, which is printed in the record, pp. 15–17, provided that James should erect a building according to the specifications therein contained, and furnish it with certain machinery, "the whole to be in good order and condition to be received by the overseers and operatives by the first day of August, 1851, except prevented from so doing by loss of mill building or buildings or machinery intended for the mill, by land or sea or fire or flood." The other parties to the agreement agreed to pay James for the aforesaid building, machinery, etc., the sum of $260,000 in certain instalments.

In accordance with a previous agreement, the parties to this contract applied to the legislature of Rhode Island, and obtained a charter of incorporation, in May, 1851, under the name of the Atlantic De Laine Company. The charter is printed in the record, pp. 189–191. The company organized under this charter on the 22d of May, 1851, and elected officers, Charles T. James being one of the directors, and George W. Chapin, treasurer; and by the by-laws, the capital stock was fixed at $300,000, divided into three hundred shares of $1,000 each (record, p. 443). The original subscription, however, was only for two hundred and eighty-three shares, which were divided as follows: —

Charles T. James	150	shares.
Hill, Carpenter & Co.	30	"
Hoyt, Tillinghast & Co.	25	"
Hacker, Lea & Co.	25	"

Globe Printing Co.	25	shares.
Dodge, Tucker & Co.	15	"
Day, Owen & Co.	3	"
Harrison & Co.	10	"

Of these the following only were paid in: —

Hill, Carpenter & Co.	$30,000 00
Hoyt, Tillinghast & Co.	25,000 00
Hacker, Lea & Co.	25,000 00
Globe Printing Co.	25,000 00
Charles T. James	113,000 00
Dodge, Tucker & Co.	15,000 00
Day, Owen & Co.	3,000 00
N. P. Bartlett	1,000 00
Harrison & Co., on account of their subscription	495 53
	$237,495 53

In consequence of their failure, Harrison & Co. paid no more towards their subscription. Bartlett purchased a share from the company in 1852, and resold it to them in 1853. (Record p. 406.) The Globe Printing Company, of Providence, consisted of Josiah Chapin, William C. Chapin and George W. Chapin. Hoyt, Tillinghast & Co., of New York, of Edwin Hoyt, Philip Tillinghast, Nehemiah Knight, and William Brenton Greene. Hacker, Lea & Co., of Philadelphia, of Thomas T. Lea, Joseph Lea, Isaac Hacker, Thomas Kimber, Jr., Abijah E. Stephens and Francis W. Hemsley. Hill, Carpenter & Co., of Providence, of Paris Hill, Joseph Carpenter and William J. Cross. Dodge, Tucker & Co., of Boston, of Joshua C. Dodge, Alanson Tucker, Jr., and Lewis Mills.

Record, pp. 360, 361, 443, 445–449.

On the 28th of July, 1851, James wrote to Chapin the following letter: —

GEORGE W. CHAPIN.

Treasurer, A. D. Mill.

Dear Sir: — A combination of circumstances compels me to lay the following before you, viz. I must have in some form, and at an early day, $75,000, for six, eight and twelve months, to enable me to go on with my contract, otherwise I may be compelled to stop until such time as my affairs can be satisfactorily arranged. It is not for the want of property that compels me to make this request, but it is for the want of money. It is in the power of the company, and for their interest, to render me immediate assistance at this time. A definite answer is respectfully requested at the earliest possible moment.

Yours truly,

(signed), CHARLES T. JAMES.

PROVIDENCE, July 28, 1851.

Record, p. 236.

In consequence of this application, and of its not being convenient to call a meeting of the corporation, an agreement was made on the 1st of August, between Hill, Carpenter & Co., the Globe Printing Company, Hoyt, Tillinghast & Co.; Hacker, Lea & Co., and Dodge, Tucker & Co., of the one part, and James of the other, whereby these firms agreed to lend James $25,000 in cash and $50,000 in notes upon the execution and delivery of a mortgage of certain property, therein mentioned, by James to them. And James agreed that he would procure Alfred R. Fiske, of Lancaster, in Pennsylvania, to become a party with him to the contract of the 1st of January previous, for building the mill.

Record, pp. 179, 180.

James on that day executed mortgages, with power of sale clauses, of various properties, for the sum of $75,000 to

George W. Chapin, as trustee of the parties of the first part to the above agreement. Only one of these need be recited, whereby he mortgaged to Chapin, as trustee, all his right, title and interest in and to the capital stock of the Atlantic De Laine Company, and in and to the real and personal estate of the corporation, whether held by the corporation or by any person in trust for them, and in and to the personal property held by James and the *cestuis que trust*, either as trustees or as tenants in common.

Record, pp. 440–442.

The answer admits that it was understood that the other property included in the mortgages should be first applied to the payment of the debts secured thereby, and that the interest of said James in the stock of the Atlantic De Laine Company should not be resorted to until said other property should have been exhausted, leaving a balance of said debts unpaid.

Record, p. 24.

On the same day an indorsement was made on the back of the agreement of January 1st, for building the mill, by which, after reciting that the parties thereto had procured an act of incorporation, under the name of the Atlantic De Laine Company, of which they had become stockholders, it was "agreed by them that the said contract, and all the obligations arising therefrom on the part of the parties of the first part, shall be assumed by the said corporation," and James, on his part, agreed "with the said corporation that he assents to the above assumption of the within contract, and will proceed in the execution and completion of all his part of the same which is yet unperformed, for the use and benefit of the said corporation, in the same manner as if the said contract had originally been made with it."

Alfred R. Fiske, on the same day, became associated with James in the performance and completion of the contract.

Record, p. 17.

On the 2d of Sept., 1851, James made an assignment of all his property to Lyman B. Frieze, in trust for his creditors in the manner therein set forth.

Record, pp. 8–13.

By this assignment the assignee was authorized and required to go on and complete the contract with the De Laine Company according to its terms.

Record, p. 11.

Up to the time of this assignment the sum of $231,000 had been paid to James, leaving the sum of $29,000 still due out of the contract price of the mill. Frieze went on and completed the mill, which was delivered over to and accepted by the company in February, 1852.

Between December, 1851, and April, 1853, George W. Chapin paid certain sums which he charged to James's contract account, and which amounted to $20,852.03 (Record pp. 185–188). He also paid Frieze, his assignee, between December, 1851, and December, 1852, $53,314.77. During the year 1852 part of the property covered by the mortgage was sold by agreement, and applied on the mortgage debt, reducing it to a little over $50.000.

Record pp. 226, 227.

During the year 1852 James made a claim upon the company for work done and materials furnished outside the contract, and by an agreement dated the 21st of June, 1852, between Chapin, as trustee and as treasurer of the Atlantic De Laine Company, and James and Frieze, which recited

James's claim and a similar claim made by Frieze, all matters in dispute between said parties were referred to the arbitration and award of James Y. Smith and Thomas J. Hill, of Providence.

Record pp. 181, 182.

Negotiations were begun and continued during the year 1852 for the settlement of accounts between James and the Atlantic De Laine Company, but they came to nothing; and at last, in the autumn of 1852, Chapin gave Frieze notice that he must sell the property under the power of sale contained in the mortgages, unless the money was paid. This he did by direction of Hacker, Lea & Co.; and on the 5th of February, 1853, Chapin advertised all the property included in the mortgages to be sold under the power of sale on the 25th and 26th of February, 1853.

Record pp. 407–409.

Mr. James, who, from 1851 until 1857, was United States Senator from Rhode Island, was then at Washington, in attendance upon the Senate during the session of Congress. On the 4th of February, Frieze wrote to James as follows: —

"Chapin this day received a letter from Hacker, Lea & Co., ordering him to advertise the property at once, and he has therefore backed out of his agreement of yesterday, and says he must advertise to-morrow. I tried every way to get him to postpone it till I could hear from you; but he will not take the responsibility of so doing. Carpenter has gone to Cuba, and everything, therefore, goes just as says Josiah Chapin and the New York and Philadelphia houses. I told Chapin the property should not be sold if there was any law to prevent it, till they had made a statement of their standing, to show what the mill was doing and the stock was worth. He replied that he could not make a statement till our account was settled."

Record p. 152.

On the 15th of February, Frieze, who had before applied

for a statement of the condition of the company, wrote the following letter to Chapin :—

PROVIDENCE, Feb. 15, 1853.

GEORGE W. CHAPIN, *Trustee for Hill, Carpenter & Co. and others, and Treasurer of the Atlantic DeLaine Co.*

Dear Sir :— I feel it my duty to demand of you a statement of the condition of the standing and account of the Atlantic De Laine Co., so that I may be able to represent the De Laine stock, etc., which you have advertised as trustee to be sold on the 25th and 26th inst., in its true light and value, and make it sell for what it is worth.

Very truly yours,

L. B. FRIEZE,
Assignee of Charles T. James.

Record, p. 182.

Chapin thereupon called upon Frieze in his office, and said, in answer to his request for a statement, "I don't know that I can give you anything that will be satisfactory," or something to that effect; that it would be a great deal of trouble to make out one; that they had a large quantity of goods on hand, the price of which was fluctuating, and therefore they could not fix the amount so that they could make a statement up. Some of the accounts were so tangled up or mixed up, they being not definitely settled, that he hardly knew how they could get at it.

Parkhurst's test., Record, pp. 36, 37.
Chapin's test., *Int.* 28, Record p. 410.

After the property was advertised for sale, Nathaniel F. Potter, treasurer of the Narragansett Brick Company, which had a subsequent attachment upon land belonging to James in Scituate, R. I., included in one of the mortgages of Aug. 1, 1851, called upon Chapin and tendered him the amount due on said mortgages, and demanded a transfer of

the same, which he refused to give. (Rec., p. 52.) Thereupon Frieze and the Narragansett Brick Company filed bills in equity for injunctions against the sales of the property (Rec., pp. 450, *et seq.*). Injunctions were obtained which were subsequently dissolved, except as to the stock in the Atlantic De Laine Company (Frieze's letter to James of Feb. 26, 1853, Rec., p. 472). The homestead estate and the stock thereon were accordingly sold, and left due on the mortgage, March 2, 1853, the sum of $43,092.58; to secure which there still remained mortgaged, James's interest in the capital stock of the Atlantic De Laine Company. On the 26th of February, Chapin wrote a letter to Frieze (Rec., p. 96), inclosing a statement of the affairs of the company, which the plaintiff alleges to have been untrue and fraudulent, and upon which this suit turns, and which is several times printed in different parts of the record.

"STATEMENT OF THE ATLANTIC DE LAINE CO., JAN. 1, 1853.

Bills payable	$410,615 39
Due agents for advances on goods	90,026 19
Due various persons on account	51,404 44
Capital Stock	237,495 53
	$789,541 55

Credit.

Cash and bills receivable on hand	$13,584 92
Cost of real estate, cassimere department, and amount paid Charles T. James's contract account	310,006 40
Due from Lyman B. Frieze, assignee	53,314 75
Due from sundry persons	2,061 38
Wool, cotton, and supplies at mill	190,692 17
De laines, cassimeres on hand	149,516 74
Balance	70,365 53
	$789,541 55

"I would state our directors estimate that $50,000, or more of the above balance accrued from the non-fulfilment of the contract with Charles T. James, which they shall prosecute against him or his assignee. The above is a true copy from the books.

"GEORGE W. CHAPIN, *Treasurer.*

"*Providence, Feb.* 26, 1853."

Record, pp. 95, 182, 183, 424, 440.

Upon the faith of this statement the settlement now sought to be set aside was made, and the following releases, transfers and other instruments were executed: —

The release marked "C," annexed to the bill, and dated March 2, 1853.

Record, p. 17.

The mutual release marked "D," of the same date, annexed to the bill.

Record, p. 18.

An assignment of the same date, by Frieze to the Atlantic De Laine Company, in consideration of $83,000, of all of James's interest in its capital stock.

Exhibit N, Record, p. 184.

A release of the same date by George W. Chapin, trustee, and the *cestuis que trust* under the contract and mortgage of Aug. 1, 1851, to James, of all claims outside of the mortgage debt, but retaining those under the mortgage, and covenanting not to sue him on the notes secured thereby, for a hundred years.

Exhibit L, Record, pp. 445–449.

A transfer on the company's books "To the Atlantic

De Laine Company and George W. Chapin, trustee" of one hundred and thirteen shares in the capital stock.

Record, pp. 257, 445 (twice printed).

Frieze, on the day after this settlement, wrote the following letter to Mr. James: —

PROVIDENCE, March 3, 1853.

Dear Sir,— We have partially arranged with the De Laine Company, by which they agree to release you from all obligations, and give a full discharge from all claim. They release the Scituate farm to Potter, which makes it right for you. The estate was sold, and amount of purchase money obtained of John Carpenter on Mr. Holmes's note, indorsed by myself, payable on demand. The Blackestone folks are making arrangement to sell their mortgage. I enclose a slip from Holmes.

I will write you full to-morrow.

Yours truly,

L. B. FRIEZE.

James was in Washington while this settlement was made, and telegraphed to Frieze, asking that the whole matter might be delayed until his arrival home, which would be in a few days. He afterwards declared that he did not consider himself bound by it, and if he lived he would rip it up at some future time; in conversation utterly repudiated it.

Parkhurst's test., *Answers to Ints.* 26 *and* 27, *and Cr. Int.* 22, Record, pp. 38, 39, 44.

The bill in the present case was filed on the 1st of March, 1859, in the Circuit Court in Rhode Island by James, he being then a citizen of New York, against the Atlantic De Laine Company, George W. Chapin and Frieze.

The subsequent history of the stock of the Atlantic De Laine Company may, in one aspect of the case, be important.

In January, 1854, certificates of stock were first issued as follows: —

Hoyt, Tillinghast & Co.	25	shares.
Hacker, Lea & Co.	25	"
Globe Printing Company	25	"
Hill, Carpenter & Co.	30	"
Dodge, Tucker & Co.	15	"
Day, Owen & Co.	3	"
Atlantic De Laine Company, Special Stock and Mortgage Account . . .	113	"

Fifty-seven of these hundred and thirteen shares were in March, 1855, divided between Hill, Carpenter & Co., the Globe Printing Company, Hoyt, Tillinghast & Co., Hacker, Lea & Co., and Dodge, Tucker & Co. The other fifty-six shares were at the same time issued to the company. Of the three hundred shares of the capital stock, sixty-three remained unissued until October, 1861, when they were divided amongst members of the firms who were the original stockholders, except Day, Owen & Co., who had transferred their shares to the company in 1855. Afterwards George W. Chapin bought the shares of Hill, Carpenter & Co. On the 31st of December, 1867, the shares were owned as follows: —

Edwin Hoyt	87	shares.
William B. Greene	30	"
Nehemiah Knight	34	"
George W. Chapin	102	"
William C. Chapin	23	"
Alanson Tucker	12	"
Josiah Chapin	12	"
Total,	300	

All these were members of the firms who were the original stockholders, and none other have been stockholders since this bill was filed.

Chapin's test., Record, pp. 405–409.
Exhibit L, Record, p. 445.

The only meetings of the stockholders of the company after May 22, 1851, were Oct. 5, 1855, Oct. 10, 1861, and Sept. 4, 1868. There was no meeting of the directors of the company between May 6, 1853, and Sept. 4, 1868, (Master's Report, Record, p. 365; Chapin's statement, Record, p. 251.) The meeting of the company of the 5th of October, 1855, the appellee claims to have been illegal.

No dividends were ever declared, but the surplus earnings of the company, and funds otherwise acquired, were invested (principally in the years 1864–65) in buildings, machinery and the like, with the knowledge, approval and assent of the directors and stockholders.

Record, p. 152.
Master's Report, Record, p. 354.

The gains and losses of the company down to Jan. 1, 1873, are stated in the supplementary report of the Master, Record, p. 490, and in the brief.

The land upon which the mills were built was bought and the cassimere department was erected by the company, and did not come within James's contract.

The land cost	$13,140 60
The construction account of the cassimere department	40,250 33
	$53,390 93

The following exhibits in the case are for convenience printed here: —

EXHIBIT B, — F. A. D., EXAMINER (Rec. pp. 424, 425).

De laines and cassimeres on hand, Dec. 31, 1852.

H T. Co., 325 cases, . .	494,293 yds.		
H. L. Co., 194 " . .	296,848[1] "		
D. T. Co., 182 " . .	275,483[3] "		
D. O. Co., 36 " . .	48,872 "		
At Globe Print Works .	123,723 "		
At the mill	53,211 "		
		1,292,433 yds.	
De laine de beges on hand.			
H. L. Co.	43,925[1]		
H. T. Co.	11,093[1]		
Globe Print Works . . .	61,723[1]		
At mill	3,014[1]		
		119,756 yds.	
		1,412,189 yds.	$147,734 30
Cassimeres.			
H. L. Co. . . 65 cases, . .	1717[2] yds.		
H. T. Co. . . 28 " . .	756[2] yds.		
		2,474 yds.	1,484 40
At mill			298 04
			$149,576 74

149,576 74
149,218 70

298 04
295 81

2 13

EXHIBIT C, — F. A. D., EXAMINER (Rec. p. 425).

Stock at mill, Dec. 31, 1852.

Wool on hand, 332,540 lbs. abt. 44 @ 46c. . . .	$147,823 96
Cotton on hand, 28,470 lbs.	3,642 98
De laine stock at mill	22,306 26
Cassimere stock at mill	7,554 57
Supplies and repairs per de laine account . . .	5,522 69
" " " " cassimere "	2,124 60
Coal at mill	4,827 75
Furniture	2,000 00
	$195,508 75

190,692 17
195,505 78

$4,813 61 — Unpaid bills.

9,364 40
3,642 98
147,823 96
22,306 26
7,554 57

$190,692 17 — See trial balance.

EXHIBIT H (Rec p. 442).

[COPY.]

DR. *Trial balance Atlantic De Laine Co., December 31, 1852.* CR.

Cash	5	5,326.96	Bills payable	19	410,615 39
Bills receivable	13	8,257-96	Globe Printing Co. . .	30	888 12
Real estate	28	13,140.60	Day, Owen & Co. . .	49	1,564 39
Albert Dailey.	39	1,900	Geo. W. Chapin, trustee	71	8,524 30
Atlantic De Laine Mill .	42	9,364.40	Hacker, Lea & Co. . .	75	31,296 37
L. B. Frieze, assignee .	47	53,314.77	S. C. Blodgett. . . .	76	50
C. J. James, cont. account	50	256,615.11	Dodge, Tucker & Co. .	77	22,767 41
Cotton account	56	3,642.98	Thurston, Greene & Co.	79	399 56
Construction account . .	60	40,250.33	Hoyt, Tillinghast & Co.	80	34,398 02
Cassimere account . . .	62	12,680.23	Hill, Carpenter & Co. .	81	41,542 46
De Laine account . . .	64	237,062.87	Hoyt & Tillinghast . .	400	25,000
Prov. S. & Gas Pipe Co. .	84	161.38	Hacker, Lea & Co. . .	402	25,000
Wool account	85	147,823.96	Globe Printing Co. . .	404	25,000
			Hill, Carpenter & Co. .	406	30,000
			Chas. T. James . . .	408	113,000
			Dodge, Tucker & Co. .	410	15,000
			Harrison & Co. . . .	412	495 53
			Day, Owen & Co. . .	414	3,000
			Nath. P. Bartlett . .	416	1,000
		$789,541.55			$789,541 55

from Bartlett

ARGUMENT.

I.

The defendants demurred to the original bill, for multifariousness, and because it did not allege and specify in what respect the statements of accounts complained of were incorrect and untrue, or in what manner or in what respect Frieze was deceived or defrauded thereby; but the demurrer was overruled.

Record, pp. 20, 21, 22.

It is difficult to see in what respect the bill can be complained of as being multifarious within the elementary definition of improperly containing in one bill, distinct and independent matters, and thereby confounding them. The foundation of the whole bill is the fraudulent representation and concealment made by Chapin, as trustee and agent of the parties who advanced the $75,000, to secure the payment of which the mortgage was given, and as treasurer of the Atlantic De Laine Company, which was composed of the parties to the original contract, and received from him the mortgaged property. It would seem therefore right, in seeking to set aside this fraudulent transaction and to redeem the mortgage, to unite the two parties as defendants to one bill, founded as it is upon one and the same transaction in which they were joint actors.

As to vagueness of allegation and the complaint that the bill does not specify in what respect the accounts were untrue, it is often impossible, where there has been a breach of trust and fraud, and the evidence is entirely or mainly in the hands of the offending party, for the plaintiff in a bill in equity to allege very definitely or explicitly in what respect representations or statements made to him were false and fraudulent. A demurrer will not lie to a bill unless,

assuming all the facts alleged therein to be true, the bill would be dismissed at the hearing.

II.

(1.) The foundation of the suit is the alleged fraudulent misrepresentation of the affairs of the De Laine Company contained in Chapin's statement to Frieze of Feb. 26, 1853, and which is printed *ante*, p. 9. This is a question of fact which has been twice argued, and twice carefully considered in the Circuit Court, and each time has been found against the defendants. On appeal from that decree, the burden of proof is upon them to show that the decision below was wrong, and no longer upon us to establish the fraud. In an appeal from the District to the Circuit Court, Chief Justice Taney said, "The judgment of that Court is to be regarded as correct, unless the appellant can show it to be erroneous, the burden of proof is upon him. In a case like this, which is purely a question of fact, depending upon the testimony of a multitude of witnesses, whose statements are often inconsistent with each other in material and essential particulars, and whose relative title to credibility has to be carefully weighed and scrutinized, nothing less than the firmest and clearest conviction that the District Court had fallen into error would justify this Court in reversing its judgment, and the more especially when, as in this case, it appears from the written opinion filed by the judge, that the whole case was most carefully and elaborately considered and decided in that Court."

Taylor *v.* Harwood, Taney's Dec. 437, 446.

This was said in an appeal in admiralty, but the principle holds equally true in an appeal in equity, where the question of fact turns upon contradictory statements of witnesses, and upon complicated accounts.

But it is unnecessary for the appellee to invoke the aid of the rule laid down by Chief Justice Taney, for a patient unravelling of the facts of this case renders the fraud, by which Chapin imposed upon Frieze, and procured from him the releases which the Court below has set aside, perfectly apparent.

On the day of settlement there remained due on the mortgage, with interest, the sum of $43,092.58 (*Record*, pp. 226, 227, 248); and, according to Chapin's statement (*Record*, p. 248), deducting what was due James from what had been lent to Frieze, there was left a balance due the company of $41,740.88, making a total of $84,833.46. The plaintiff did not admit all this, but it will do for the purposes of the argument. The company had a lien upon the shares for any amount due them, but they had no right to look to the mortgage or to exercise the power of sale given therein, except to enforce payment of the mortgage debt, and the amount of this had been tendered them, and a transfer of the mortgage demanded, by a subsequent attaching creditor of part of the mortgaged property. This attachment, as this Court has decided, constituted a lien, and, in Rhode Island, the attaching creditor had a right, as a subsequent incumbrancer, to demand an assignment of the first mortgage upon payment of the amount due thereon.

If the shares of the Atlantic De Laine Company were worth, at that time, their par value, there still remained a large sum of money due James or his estate, in any settlement between himself, his assignee and the company.

At the foot of the statement sent on the 26th of February, by Chapin to Frieze, it is said, "That the above is a true copy from the books"; and, in a sworn statement laid before the Master, at the hearing by Chapin, he declared that the statement was "a correct and true statement of the affairs and conditions of the De Laine Company," and "similar to the

statements furnished to Gen. James, as well as the other directors, annually, on the first of January" (*Record*, p. 240); and, in another place in the same statement, he says, "The statement furnished the assignee was a true copy of the books, January 1, 1853" (*Record*, p. 248). In his examination before the master, in 1872, Chapin changed his testimony somewhat by saying that this statement was a correct statement of the condition of the corporation, "taken from the books and *accounts* of that time" (*Ints.* 16–19; *Record*, p. 389). Both statements can be demonstrated to be false.

In his cross-examination in 1872, the following questions and answers appear: —

"*Cross-Int.* 24. Is there any statement similar to said Exhibit A [the statement in question], of the condition of the company at any definite time previous to March, 1853, to be found on any of the books of the company?

"*Ans.* I don't know of any.

"*Cross-Int.* 25. Where did this half sheet of paper, Exhibit A, come from?

"*Ans.* It came from my private letter book.

"*Cross-Int.* 26. Where is that letter book?

"*Ans.* It is out to the farm now.

"*Cross-Int.* 27. It was not taken from the book which you have produced here as the letter book of the company?

"*Ans.* It was not."

Record, p. 394.

Chapin afterwards wished to correct his answer to the twenty-fourth cross interrogatory, by adding, "unless you consider the trial balances, which do show the condition of the company, as it appears on the book, such a statement."

Record, p. 411.

With respect to his assertion, that the statement was such a one as he furnished annually to the directors, the following examination took place: —

have been returned unused to the company, and the drafts, as collateral for which these notes were given, were finally entirely paid out of the proceeds of the goods in the agents' hands.

Cross-Ints. 72–78; Record, pp. 397, 398.

On the credit side of the statement the second item would seem to indicate the cost of the real estate and mills of the company — independently of what had been advanced to Frieze — to have been $310,006.04; and that Chapin considered that its cost truly represented its value, is shown by his statement in his original deposition that one of the assets of the company was "the mill property which had cost $310,006.04" (*Rec.* p. 164), and his language in Exhibit L, where he says, "allowing the mill to have been worth its cost and to be sold for $310,000."

Record, p. 243.

Now, this did not represent the true cost of the mill (which, as the mill was entirely new, doubtless represented approximately its real value), but only what had then been paid on account of it by the company up to that time.

Balch's test, *Cross-Ints.* 15, 16; Record, p. 419.

The real estate and the cassimere department were not included in James's contract, but were purchased and built from funds procured elsewhere.

Their cost was as follows: —

Cost of real estate	$13,140 60
Cost of cassimere department . . .	40,250 33

And this second item in the statement given to Frieze was obtained by adding to these two amounts the amount which had actually been paid up to date on James's contract account, and after James's assignment, had been paid by the company and charged by Chapin to said account,

and which amounted to $256,615.11, making a total of $310,006.04.

Exhibit Z continued, Record, p. 200.

But the mill had cost more than this. The sum of $29,000 was still due James (without including interest) under the contract, and, besides that, James had made a claim for $79,-000 for expenses for extra work and materials expended on the mill outside the contract, and for which he claimed that the company owed him this sum. Although Chapin, in answer to Cross-Int. 115 (*Rec.* p. 401), said he didn't think he ever heard of this claim of James's until 1856, it was one of the claims which were the subject of the submission to arbitration signed by him, James and Frieze on the 21st of June, 1852 (*Rec.* p. 181), and is specially alleged in the bill brought by Frieze against him for an injunction in February, 1853 (*Rec.* p. 451). William J. Harris, an experienced accountant, who looked over Gen. James's accounts, made out that this extra cost amounted to $79,973.56, which, added to the $260,000, the contract price of the mill, would make a total of $339,973.56.

Record, pp. 356, 357, 421.

This would make the cost of the real estate and the mills of the company, exclusive of Frieze's account, to have been as follows: —

Real estate	$13,140 60
Cassimere department	40,250 33
Cost of mill, built by James without interest,	339,973 56
Items in Exhibit O, paid by Chapin and charged to James's contract account after James's assignment, and down to April 30, 1853 (*Rec.* pp. 185–188) . .	$20,852 03
Total cost of mill	$414,216 52

Making all proper deduction from this statement, and the actual value of the mill measured by its cost was enough to do away entirely with the balance charged in the statement furnished to Frieze.

But Frieze, in his sworn petition for an injunction (*Rec.* p. 420) against the sale of the mortgaged property, put the claim for extra work and materials at $55,000. Taking that estimate, the cost of the real estate of the company was as follows: —

Contract account without interest . . .	$260,000 00
Amount claimed outside of contract . .	55,000 00
Cost of real estate and cassimere department,	53,390 93
Items in Exhibit O	20,852 03
Total	$389,242 96

The second item on the credit side, therefore, making allowance for gross amounts, on this basis (the basis selected by Chapin), ought to represent about $375,000.

The items "De Laines, Cassimeres, on hand, $149,516.75" and "Wool, Cotton and supplies at mill, $190,692.17" (the fifth and sixth items on the credit side of the statement), are not to be found in any book of the company nor can they be made up from any items in those books.

Chapin's test., *Cross-Ints.* 137½–139, 144, 145, 155–166, Record, pp. 402, 403, 404, 411.
Blodget's test., *Cross-Int.* 5, Record, p. 414.
Balch's test., *Cross-Ints.* 4, 5, Record, p. 418.

The fifth and six items on the credit side of this account seem to have been derived from Exhibits B and C (*ante*, p. 14), but neither of these is accurate. Exhibit C pro-

duced by Chapin shows a difference of $5,000 in favor of the De Laine Company from the fifth item in the credit account, while, as Chapin himself admits (*Cross-Int.* 140, *Record*, p. 402), the fourth item in Exhibit B does not agree with Exhibit E^2 (*Record*, p. 436), copied from the company's books, there having been eleven more cases of goods with Day, Owen & Co. than Exhibit B shows, and he also admits that Exhibit E^2 is correct.

But the trial balance (*ante p.* 15) shows a still more marked difference, both from the statement given to Frieze and from these two exhibits. In that the sum of the cassimere and wool accounts amounts to $410,574.44, while the sum of the fifth and sixth items of the statement given Frieze, makes them only $340,208.91, and this difference produces a balance of $70,365.53, the loss alleged to have been made up to that time by the company. Chapin accounts for this by alleging depreciation in value of the goods on hand, but he had told Frieze that they had a large quantity of goods on hand the price of which was fluctuating, and therefore they could not fix the amount so that they could make a statement up, "some of the accounts were so tangled up, they not being definitely settled, that they hardly knew how they could get at it;" (*Record* pp. 36, 37), and he could not himself tell where he got this balance. He testifies thus:

"*Cross-Int.* 155. Did you personally take any account of stock at the mill in December, 1852, or January, 1853?

"*Ans.* I did not.

"*Cross-Int.* 156. Is there any book of the company from which you derived the figures $22,306.26 following words 'De Laine stock at mill'? (*In Exhibit C, ante p.* 14).

"*Ans.* I can't say whether there is or not; we have not been able to find any.

"*Cross-Int.* 157. Is there any book of the company from which you derive any of the figures following and below that item of this statement?

"*Ans.* I can't say whether there is or not; we have not been able to find any.

Record, p. 403.

"*Cross-Int.* 164. Have you any actual personal knowledge as to how the other figures on this paper, Exhibit C, were obtained?

"*Ans.* I have not; I have no doubt whatever, said figures were taken at the inventory made at the mill on the 31st of December, 1852.

"*Cross-Int.* 165. Where is that inventory book, if there be such a book?

"*Ans.* We have not been able to find it.

"*Cross-Int.* 170. Is there any profit and loss account upon the books of the company for the years 1851, 1852 and 1853?

"*Ans.* There is not.

"*Cross-Int.* 171. When does a profit and loss account upon the books commence?

"*Ans.* March 31, 1854.

"*Cross-Int.* 172. The item in Exhibit A (*ante p.* 9), called balance, is not the balance of any profit and loss account that appears upon the books?

"*Ans.* It is not."

He further testifies that Exhibits B and C (*ante*, p.14), produced for the first time in the autumn of 1872, were in his possession at the time of the previous examination in 1865.

Record, p. 404.

And yet, in a statement produced by him in 1865, there is a profit for 1853 of $1,945.28.

Chapin's dep. *Cross-Ints.* 27–29, Record, p. 170.
Exhibit DD, Record p. 206.

The "balance, $70,365.53," is not to be found in any of the company's books.

Chapin's test., *Cross-Ints.* 171–173, Record, p. 404.
Blodget's test., *Cross-Int.* 6, Record, p. 414.
Balch's test., *Cross-Ints.* 8–10, Record, p. 418.

It seems to have been an arbitrary estimate of Chapin's, made up for the purposes of the statement, which he could no longer refuse to give to Frieze.

The trial balance (*Exhibit H, ante*, p. 15) which Chapin says (*Explanation of answer to Cross-Int.* 24, *Record*, p. 411) does "show the condition of the company as it appears on the books," indicates no loss, and this is the only "account" of the company to which reference is made to support the statement laid before Frieze, for Exhibits B and C are evidently accounts prepared (whether at the time or subsequently is perhaps not material) to explain the statement if it should be called in question.

The object of these cooked accounts evidently was to depreciate the value of the stock of the company; and on the basis of them it was contended that the shares were worth but seventy per cent of the par value. None of the books of the company showed that they had made any loss, and if any loss was ever apprehended, the exact circumstances and manner of calculation should have been detailed; and the extremely bad appearance which Chapin makes as a witness, and all the suspicious circumstances connected with his attempts to sell the mortgaged property, his refusal to accept the amount due thereon, his extraordinary action in copying this account into his private letter book, instead of the books of the company, and his anxiety to have it returned to him, as well as the reluctance with which he produced his accounts before the Master, justify the inference that this statement was made up for a fraudulent purpose.

There is nothing from the genuine accounts of the company to show that at the time of the settlement the stock was not worth par.

Taking the amount that had actually been expended on the buildings, and the value of the goods and material on hand as shown by the trial balance, and the stock was worth from twenty to thirty per cent above par.

The other stockholders in the DeLaine Company did not look to dividends so much as to commissions to repay them for their investments. Hill, Carpenter & Co. sold the wool; the Globe Printing Company printed the goods, and the commission houses in Boston, New York and Philadelphia sold these. Much more than the capital paid in was expended on the land and mills, and from the beginning the business of the company was carried on by discounting its paper, indorsed by the stockholders; and in 1861 a large amount of stock and money was divided among them as commissions for such indorsements.

Chapin's test., *Cross-Ints.* 63–71, Record p. 397.
Master's Report, Record pp. 363, 364.
Exhibit P, Record p. 253.

The value of the shares to the shareholders in such a corporation is not to be measured by the early probability of receiving dividends, and the company might year after year show losses or no profits while the stockholders might be perfectly content with the result of the adventure, and be anxious to get possession of any stock held by persons whose interest in the concern was not identical with their own.

I think it satisfactorily appears, therefore, that the statement rendered to Frieze neither was "a true copy from the books," as it purported to be, and as Chapin repeatedly swore that it was, nor did it exhibit a true and fair account of the condition of the company, as he likewise repeatedly averred under oath, and to the last that it did. The next question is, whether Frieze was influenced and induced to make the settlement he did make by reason of this representation or any part of it.

The principle applicable in Courts of Equity to the solution of this question is well stated by Lord Cranworth.

"When, in a negotiation," says he, "between two parties, one of them induces the other to contract on the faith of the representations made to him, any one of which has been untrue and known to the party so to be, the whole contract is in this Court considered as having been fraudulently obtained."

Reynell *v.* Sprye, 1 De G. M. & G., 698.

At the foot of the statement given Frieze, Chapin says, "I would state our director's estimate that $50,000 or more of the above balance accrued from the non-fulfilment of the contract with Charles T. James, which they shall prosecute against him or his assignee." (*Ante, top of* p. 10.)

This, which is the first appearance, so far as the case shows, of any such claim, was undoubtedly meant as a threat againt the assignee, to induce him to make the settlement which was afterwards made between the parties. If there had been any pretence for such a claim under the original contract, it was entirely waived by the agreement indorsed thereon on the 1st of August, 1851, and by the acceptance of the mill, without objection from the assignee of the contractor, in February, 1852; and, independently of this, the company failed to make any proof of damage at the hearing before the Master.

Master's Report, Record, p. 357.

The claim had served its purpose when it had scared Frieze, and seems never to have been earnestly pressed afterwards.

It should be remembered, in considering how far the statement influenced the settlement, that it was not intended to be laid before Gen. James, whose knowledge of the whole transaction was greater than that of Frieze or any one else, and who would not have been easily deceived; but it was used and intended to be used in James's absence, and

was the basis of a settlement hurried up without consulting him, and in spite of his request to have the whole matter postponed till his return.

George B. Holmes, who was consulted by Frieze as to the settlement, and recommended it, founded his advice upon the statement made by Chapin to Frieze, and, probably, also upon the oral statements which were made at the same time.

Holmes's test., *Int.* 4, Record, p. 89.

From that statement and information he made the paper marked "A," printed in Record, p. 133, and which is as follows: —

113 shares, cost $1,000 each . . .		$113,000 00
Less thirty per cent		33,900 00
		79,100 00
Balance due on contract		29,000 00
		$108,100 00
Claim against James's mortgage	$42,350 00	
Assignee's acknowledged account	53,324 00	
Claims against contract .	15,000 00	
	$110,674 00	
Minus		$2,574 00

Estimating, as the evidence of the books justifies our doing, the stock as being worth at least par, and Holmes would have found, upon his own basis of calculation, the sum of $31,000 due James at the time of the settlement. It is safe to assume that, under such circumstances, he would not have recommended it.

Parkhurst, who had been book keeper to James, and seems afterwards to have acted in the same capacity to the assignee, gives a very graphic account of the manner in

which the settlement was finally made: "I did have the statement in my possession for some time, and I did show it to Geo. B. Holmes, and I think Mr Fiske also saw it. Mr. Holmes said: 'Let us see Parkhurst about that statement; what do you think of it?' I said, 'I do not know what to think of it; what is your opinion, Mr. Holmes?' Said he, 'This is the lamest thing or the blindest thing that I have ever seen issued; it is a regular two-faced thing; for, by this paper, this company have either lost $80,000, or they have made double that sum. Look at it in any way, and I cannot see it any different.' As to what Mr. Holmes said, so far as I could understand it, I think it was true. While the statement was in my possession, I was called upon by George W. Monroe, who was then a clerk in the employ of Mr. Chapin. He came into the office and inquired for Mr. Frieze. I said, 'he is not in; is there anything I can do for you?' He said Mr. Chapin gave him a paper a day or two since, and he wants it. I asked him what kind of a paper it was. He said a statement, or something of that kind, 'do you know anything about it?' I said, 'Yes.' 'Do you know where it is?' asked Mr. Monroe. I replied that it was in my possession; 'what does Mr. Chapin want of it?' The reply was that Mr. Chapin wanted it to correct some errors there were in it. My reply was, 'Mr. Chapin has a copy of it, if he has made any errors let him make out a correct one, and we can see how the two compare. This one I cannot give up; my orders are to keep it, and give it up to no one.' . . . No other statement was ever made of the condition of the affairs of the De Laine Company to my knowledge. I had the statement for some time, and then gave it to Mr. Frieze, who said he would give it to Chapin when he settled his account, as he seemed very anxious about it. I think that Mr. Chapin sent two or three times afterwards for it. I am quite sure I was called upon for it more than once, and

Mr. Chapin called for it himself. . . . The De Laine Company had an account against the assignee for $70,000 or more which they were very urgent to have adjusted. They were clamoring for their pay; the assignee was so situated that money to meet this claim, and release the stock could not be procured, neither was he able to meet other demands that were due and becoming due. The assigned estate was all or nearly all exhausted except the property held under the mortgage and that held by the De Laine Company as security for their claim, and for which they had refused to issue the certificates of stock. After a careful survey of the case in all its bearings, Mr. Frieze said to me he had about decided to accept the proposition made him by the De Laine Company. I said I would not do it, but I would fight it out. Mr. Frieze replied in substance: the De Laine Company have an account as rendered which taey will settle as they propose; but if we show any disposition to kick at it, Chapin says they will bring in a claim for damages for non-fulfilment of their contract, for defect in the motive power, machinery, etc., and they will make a claim which will eat up all the balance which there may be, or that we claim is due to us. We cannot get anything from them, neither stock nor anything else, and by settling this way I shall be rid of the greatest trouble I have had during this whole business. Besides, if we take their statement, the stock is worth no more, if as much as a debt; and I think that I shall make a good trade, if I settle in this way.

"Mr. Holmes made the same statement in effect as Mr. Frieze, stating that no satisfaction would be got by standing out, as they had all the advantage, and they were bound to keep it; that the best thing that could be done was to close it up, and under these views and with these feelings the account was finally settled according to the proposition made

by the De Laine Company . . . Mr. James was absent from Providence during the time these matters were pending, though we heard from him frequently. He was not here at the times the settlement was made, nor did he give his consent to it. I think the settlement was made before he was notified that it was contemplated. I know that he telegraphed requesting that the matter might be delayed until he could return."

Record, pp. 37, 38.

On his cross-examination he said, "I don't think any representations were made in writing after the statement I have before referred to. I thought that the managers of the De Laine Company were not much given to writing in their business with Mr. James or his assignee. I heard something from some one of this company (I think Mr. Chapin said) about a claim for damages for non-fulfilment of contract, and for defects in the mill; and it was also stated by Mr. Chapin or Mr. Joseph Carpenter in my presence that the interest of Mr. James's estate would not sell for anything, as no one would bid upon it. I do distinctly recollect a conversation held with the assignee. After one of these conversations in which he said he had been threatened with having his books and papers called into Court by the De Laine Company, and that they should move for the appointment of a new assignee upon the ground that payments were made for the machinery for the mill to Mason & Co., were not made in conformity to the assignment, that they should cause him a great deal of trouble if he did not comply with their proposition for settlement. This was impressed upon my mind from the circumstance that I was particularly directed to have all my books and papers in order for examination, as I might be called to produce them in Court. When I asked him would he give

me such order, he said that he had again been threatened with such a course."

Record, pp. 43, 44.

It is right to say that Mr. Frieze recollects very little or nothing of these conversations, as he recollects very little of anything else in regard to these transactions; but the positive affirmative statements of an unimpeached witness like Parkhurst, who had the fullest means of knowledge in respect of the settlement, and seemed deeply interested about it, are more worthy of credit than the negative testimony of Frieze or any one else.

Stitt *v.* Huidekopers, 17 Wall. 384.

Frieze's anxiety to settle and get rid of a troublesome matter is also shown by Fiske's testimony.

Record, pp. 58, 59.
See also Holmes's testimony, Record, p. 70.

(2.) That a corporation is liable, like any other principal, for the fraud of its officers, is well settled, and does not seem to have been disputed in this case.

National Exchange Company *v.* Drew, 2 Macq. 103.
Western Bank of Scotland *v.* Addie, L. R. 1 H. L. Sc. 145.
Barwick *v.* English Joint Stock Bank, L. R. 2 Exch. 259.
Mackay *v.* Commercial Bank, L. R. 5 P. C. 394, and cases cited.
New York and New Haven Railroad *v.* Schuyler, 34 N. Y. 30.
Tome *v.* Parkersburg Branch Railroad, 39 Md. 36.

(3.) The assignor, under an assignment for the benefit of creditors, is entitled to the residue of the assigned estate, after payment of his debts at the time of the assignment.

Halsey *v.* Whitney, 4 Mason, 202, 222.
Brashear *v.* West, 7 Pet. 608.
Lazarus *v.* Commonwealth Ins. Co. 5 Pick. 76, *S. C.* 19 Pick. 81.

And when by the extinguishment of the debts he becomes *cestui que trust* in place of the creditors, he can come into a Court of Equity and pursue the trust estate, when it has been fraudulently and improperly parted with by the trustee.

Story Eq. Pl. § 221.
Lewin on Trusts, 730.
Story Eq. Jur. §§ 533, 975.
Oliver *v.* Piatt, 3 How. 400, 401.
Hovenden *v.* Lord Annesley, 2 Sch. & Lef. 633.

Where, as in this case, the trust has been abandoned and the trust property improperly conveyed away, equity will relieve the assignor although some few of his debts are still outstanding, provision for their payment being made in the decree.

(4.) The bill was filed within six years, and as it alleges breaches of trust and fraudulent misrepresentations and concealment, the evidence of which was chiefly in the defendants' hands, it is not a case where a Court of Equity will refuse relief on the ground of the staleness of the claim.

Prevost *v.* Gratz, 6 Wheat. 481.
Michoud *v.* Girod, 4 How. 503.
Oliver *v.* Piatt, 3 Ibid. 411.
Badger *v.* Badger, 2 Wall. 92, 93.
Robertson *v.* Norris, 1 Giff. 421.
Story, Eq. Jur., § § 527, 528, 529, 1520, 1520*a*.

James never had in possession or saw the statement upon the faith of which the settlement was made, and it does not appear when he found the evidence (whatever he might have suspected) that would justify a suit in equity to set the settlement aside.

III.

If the appellee is entitled to relief, the next question arises on the nature of that relief.

(1.) The substantial identity of the corporation and the parties to the mortgage is apparent, and they admit it by their own conduct throughout. The money was lent by the principal stockholders, and for the benefit of the corporation. Chapin, the trustee under the mortgage, was also treasurer and manager of the company; the stock was transferred to "the Atlantic De Laine Company and George W. Chapin, trustee," and then a certificate of stock was issued to the "Atlantic De Laine Company, special stock and mortgage account." Afterwards the stock was divided among the various stockholders. After the three shares belonging to Day, Owen & Co., had been transferred to the company, in 1855 (nearly four years before this bill was filed), none but parties to the mortgage were ever stockholders.

Record, pp. 257, 365, 405.

Chapin being both trustee for the mortgagees and treasurer of the company, and the mortgagees and stockholders in the company being one and the same, without any intervening rights of innocent third parties as purchasers of the stock, the mortgagees and the company have identity of knowledge and interest, and with like knowledge and interest entered into enjoyment of the property fraudulently acquired by their common agent, and received the income

and profits derived therefrom. Certainly, under such circumstances, equity will treat them as one and the same.

By the settlement of March 2, 1853, the mortgage was not extinguished, but was treated as subsisting, the mortgagee and his *cestuis que trust* covenanting not to sue James on the mortgage debt, and to look to the mortgaged estate and to that only for the residue of the debt secured thereby.

Exhibit L, Record, pp. 445, 447, 448.

(2.) As this settlement was procured by fraudulent misrepresentation and concealment, Chapin and the Atlantic De Laine Company became mortgagees wrongfully in possession. By the decretal order, setting aside the release and settlement, the appellee was reinstated in her rights as mortgagor, and was entitled to redeem the mortgaged property and for an account of the rents and profits thereof received by the mortgagees while thus wrongfully in possession, according to the rules of Courts of Equity applicable to mortgagees in possession.

By those rules a mortgagee in possession must account for all rents and profits, down to the date of the Master's report, after deducting the cost of ordinary and neccessary repairs and all reasonable expenses; and he cannot set off the cost of improvements that he has unnecessarily and officiously made. As the books say, "The mortgagor cannot be improved out of his estate."

4 Kent Com. (12th ed.), 165, and Holmes's note.
Adams on Eq. (3d Amer. ed.), 118, and cases cited.
2 Washb. on Real Prop. (4th ed.), 228 *et seq.*
2 Dan. Ch. Pract. (4th Amer. ed.), 1236–1248.
Green *v.* Biddle, 8 Wheat. 76–79.
Russell *v.* Southard, 12 How. 139.
Bennett *v.* Butterworth, Ibid. 36.
Gordon *v.* Lewis, 2 Sumner, 152.
Hicks *v.* Sallitt, 3 De G. M. & G. 801.

Thorneycroft *v.* Crockett, 16 Sim. 445.
Sandon *v.* Hooper, 6 Beav. 246.
Hood *v.* Easton, 2 Giff. 692.
Millett *v.* Davey, 31 Beav. 470.
Prees *v.* Coke, L. R. 6 Ch. 645.
Thompson *v.* Hudson, L. R. 10 Eq. 497.
Ruckman *v.* Astor, 9 Paige, 517.
Clark *v.* Smith, Saxt. Ch. 121.
Shaeffer *v.* Chambers, 2 Halst. 548.
Dougherty *v.* McColgan, 6 Gill & Johns. 286.
Holabird *v.* Burr, 17 Conn. 556, 564, 565.

In the case of a mortagee wrongfully in possession, the rule is more strictly applied. In a recent edition of Story, it is thus laid down by Chief Justice Redfield: "A person who enters into wrongful possession of property under an unjust bargain will be dealt with more severely than a mortagee in possession. Where the party is a volunteer, and stands in the position of a wrong doer, he should be held to account for all which might have been made from the premises, and all doubts should be solved against him; but where the estate is thrown upon one in the necessary enforcement of his legal rights, or comes to his possession as trustee, he should only be required to act in good faith, and with reasonable care and skill, and to account for what he, in fact, realizes."

Story, Eq. Jur. §514*a*.

"Where," says Lord Hardwicke, "there is usury, extortion and oppression, as in making a mortgage and accumulating interest, the Court often directs in the decree to take everything most strongly against such person; and rightly."

Mitford *v.* Featherstonhaugh, 2 Ves. Sen. 446.
Robertson *v.* Norris, 1 Giff. 428.
Merriam *v.* Barton, 14 Vt. 501, 514.
Reitenbaugh *v.* Ludwick, 31 Penn. St. 131.

The rule is very stringent as to accounting in the case of a trustee *de son tort*.

Hennessey *v.* Bray, 33 Beav. 96.
Life Association of Scotland *v.* Siddal, 3 De G. F. & J. 58.
Hill on Trustees (4th Amer. ed.), 164.

The rule laid down in the present case in the Court below is thus stated in the judgment: —

"Set aside as the release and settlement have been, as having been obtained by fraudulent representations and concealment, it is clear that the complainant is entitled to have an account against the respondents as against mortgagees wrongfully in possession, including the net and annual profits of the property, without being accountable for the losses of subsequent years. All sums due to the mortgagee will first be charged to the mortgaged estate, as ascertained from the agreements and actual dealings of the parties, whether advanced to the actual mortgagor or his assignee. Having ascertained the unpaid balance of the mortgaged debt, including interest to the present time, the Master will next proceed to take an account of the net earnings of the mortgaged property, as against a mortgagee wrongfully in possession, deducting insurance, taxes, repairs, including ordinary improvements such as relate to the operative machinery and motive power of the mill; and including all the net earnings subject to those deductions, whether actually declared dividends or not, and however the same may have been expended or appropriated. Earnings of one year are not to be set off by losses of subsequent years . . . Shares of the stock paid, the complainant is entitled to recover in specie."

Record, p. 482.

Considering that the appellants obtained possession of the

mortgaged property by fraud, this is quite as favorable a method of accounting as they are entitled to.

(3.) The reasons for the rule disallowing the costs of improvements made to the property, apply more strongly to personal property like the plaintiff's interest in the corporation stock of this mill than to real estate; for such improvements may end in destroying entirely the mortgaged property, as in the present case where the company has been declared bankrupt, the property has been sold and the stock has become worthless. So, too, with respect to disallowing any set off of losses in certain years as against profits of other years; for the losses in one year may consume all previous profits and the property too.

Where stock is mortgaged, the mortgagee must replace it in specie. If he has sold it at a loss, he must replace it; if at a profit, he must, besides replacing it, account for the profits.

Fowle *v.* Ward, 113 Mass. 548.
Langton *v.* Waite, L. R. 6 Eq. 165, *S. C.* L. R. 4 Ch. 402.
Story, Eq. Jur. § 724 *b*.
See also Emery *v.* Parrott, 107 Mass. 95.

It may be said that Langton *v.* Waite, turned upon the usage of the London Stock Exchange, but it would seem to rest equally well on elementary principles of law.

Story, Eq. Jur. §§ 1277*a*, 1277*b*.

(4.) It was objected below that as this company never declared any dividends, the plaintiff had no right to any share of the earnings expended in erecting new buildings and in the improvement of the property.

But the rule of law relied upon to support this view can

have no application to the present case. It is undoubtedly true that until dividends are declared, the earnings of a company do not become the immediate property of a shareholder, and unless there is some provision of law to the contrary, a corporation is not compelled to divide its earnings, but may invest them in increasing its property and business facilities. The subject has been much discussed in questions arising between life tenant and remainderman as to who is entitled to extra and stock dividends.

See Rand *v.* Hubbell, 115 Mass. 461.

But this rule rests on the principle that a majority of the stockholders have the right to govern any corporation, and the remedy of a dissentient is to sell his stock. It cannot apply where a stockholder is deprived by the fraud of the corporation of his stock, and, with it, of his voice in the management of the company and of his remedy in the power to sell his stock and invest his property elsewhere. When such a stockholder is restored to his rights, these must include the right to an account of all the earnings made meanwhile, whether divided or not.

This Court has said that "the owner of a share of stock in a corporation holds the share with all its incidents, and among those incidents is the right to receive all future dividends, that is, his proportional share of all profits not then divided. Profits are incident to the shares to which the owner at once becomes entitled, provided he remains a member of the corporation until a dividend is made. Regarded as incident to the shares, undivided profits are property of the shareholder, and as such are the proper subject of sale, gift or devise. Undivided profits invested in real estate, machinery or raw material, for the purpose of being manufactured, are investments in which the stockholders are interested, and when such profits are actually appropriated to the payments of the

debts of the corporation they serve to increase the market value of the shares, whether held by the original subscribers or by assignees."

The Collector *v.* Hubbard, 12 Wall. 18.
See also Jones *v.* Terre Haute and Richmond Railroad, 57 N. Y. 196.

The stockholders in the Atlantic De Laine Company, as has been before said, did not look to dividends for a profit.

The expenditure of their earnings, therefore, in enlarging and rebuilding the mill was beneficial to them; but it might not have been so to Gen. James, and certainly would not have been to Mrs. James, who would have looked to her interest in the mill for an income; and, had she been in the enjoyment of her rights, she would certainly have sold her stock when the annual earnings exceeded the capital paid in, as they did in some years, even if the great weight which she would have had in the affairs of the company, as owner of $\frac{118}{237}$ of the capital stock, had not been exerted to compel the directors to declare a dividend.

(5.) The history of this expenditure is as follows: —

The original mill up to 1859 cost in all $491,281.91. In 1859, $191,281.91 was marked off to profit and loss, so that the construction account represented the capital stock of the company.

Master's Report, Record, p. 363.
Balch's test., Record, p. 313.

In 1863 the new mill was begun, and between that and Jan. 1, 1868, $1,474,522.55 had been expended, increasing the construction account to $1,774,522.55. By Dec. 31, 1869, it had further increased to $2,054,424,07.

Balch's test., Record, p. 313.
Master's report, Record, p. 363.

The gains and losses up to 1870 as reported by the Master were as follows: —

GAINS.

1855	$29,983 50
1856	42,036 01
1857	4,193 67
1858	42,816 65
1859	106,590 95
1860	98,318 04
1861	108,180 30
1862	360,827 92
1863	320,738 09
1864	111,444 13
1868	273,129 21
Aggregate gains	$1,498,248 47

LOSSES.

To Dec. 31, 1852	$65,551 92
1853	11,305 61
1854	3,930 05
1865	846 82
1866	288,191 94
1867	124,479 52
1869	199,048 45
Aggregate losses	$693,354 41

Record, p. 362.

It thus appears that between 1855 and 1865 the company made a profit every year, and these profits amounted to the great sum of $1,225,117.26. After the new mill built with these earnings went into operation, the losses began.

(6.) All this money went through the hands of Chapin, the treasurer of the corporation and the trustee under the mortgage, and was expended by him after this suit had been brought, without any vote of the corporation or the directors directing or authorizing it. In 1868, after the decretal order setting aside the settlement and release of 1853 had been entered and the case had been sent to the Master, meetings of the directors and stockholders were held, and this use of the earnings of the company was ratified and confirmed.

Exhibits Y, Z, Record, pp. 265–268.
Master's Report, Record, pp. 365.

The original expenditure, therefore, as to the appellee, was illegal, and the ratification after the decretal order and without any offer to restore her to her rights as a stockholder, ought not to be allowed to render valid as against her what was invalid before.

See Story on Agency, § 246.

But, however this may be, it is well settled that subsequent ratification can only render previous unauthorized acts of an agent valid where the principal ratifies under circumstances where he could lawfully have authorized the acts beforehand.

Holmes's note to 2 Kent Com. 616.

Applying this principle to the present case, and the ratification is of the same effect as if, after the decretal order in this case, and while it was before the Master, the company had come together and appropriated the earnings to the purposes of building new mills and enlarging the business of the company. Would a Court of Equity allow such action to defeat the right of a plaintiff whom it had already decided had been deprived of his shares by the fraud of the

corporation, to an account in respect of the earnings so expended?

It is true that the plaintiff does not hold a majority of the stock, but one vote sometimes turns a minority into a majority, and a person holding as much stock as the plaintiff did, would have very great influence. But, besides, as I have before said, the defendants' fraud has deprived us alike of our voice in the management of the company and our remedy of selling our stock.

If after bill filed and *a fortiori* after a decretal order, establishing the fact, a corporation goes on and makes such application of its earnings as was made here, it cannot affect the right of a plaintiff of whose shares the corporation has fraudulently obtained possession. Whatever it does under such circumstances it does with full notice that the plaintiff has or claims rights in the corporation and the maxim *Volenti non fit injuria* applies. The question is not before the Court what would be the remedy of a stockholder deprived of his rights by the fraud of a third person, without any participation by the corporation or its officers.

(7.) It is unnecessary to consider the various exceptions to the Master's report in detail, as what has been already said disposes of most of them. The third exception of the appellants to the final report (*Rec.* p. 506), that "the Master hath not in his report distinguished between the earnings on mortgaged property as it existed at the date of the settlement, and earnings upon other property, whether acquired from invested earnings on the mortgaged property or from other sources," would seem to be answered by the language of the Court overruling it, that "there is no evidence to support the theory that profits have been computed on any property except the mortgaged property, and property produced from the earnings of the mortgaged property."

Record, p. 507.

The appellee took certain exceptions to the report which were overruled, and objected to the allowance of some of the exceptions of the appellants; but as she has not appealed, these are not now before the Court.

C. H. HILL,
of Counsel for the appellee.

Circuit Court of the United States,

DISTRICT OF RHODE ISLAND.

In Bankruptcy.

In the Matter of Petition for Review and Revision of the Decree of the District Judge in Petition of Lucinda James, Administratrix,

vs.

The Atlantic De Laine Company and George W. Chapin et al.

Shepley, *Judge*.—The principal question presented for review is, whether a judgment and execution creditor of a manufacturing corporation in Rhode Island can sustain an involuntary petition in bankruptcy against the officers or stockholders of the corporation for acts of bankruptcy committed by the corporation, such officers or stockholders being subject to the liabilities imposed by the laws of the State upon a failure to comply with the statutes relating to such corporation.

The law of 1847, in force at the date of the incorporation of the Atlantic De Laine Company, and which, it is conceded, was continued by Chapter 128 of the Revision of 1857, required that annually on or before the 15th of February, a certificate signed by a majority of the directors, stating the amount of capital stock paid in, etc., should be filed in the town clerk's office where the manufactory is established, and that on failure so to do all the stockholders of such company shall be jointly and severally liable for all the debts of said company then existing, and for all that shall be contracted before such notice shall be given, unless said company shall have become insolvent, etc.

The charter of this company declared that the liability of its members and officers shall be fixed and limited to the Statute of 1847, and by the same statute it was provided that when the stockholders of any manufacturing company shall be liable to pay the debts of such company or any part thereof, their persons and property may be taken therefor, on any writ of attachment or execution against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts. A remedy in equity was also provided against stockholders or officers of the company.

It is claimed by the learned counsel for the petitioner, that the stockholders of this company, by reason of the failure to comply with the requirements of the law, are subject to the liability of copartners, and continue liable for all the debts of the company in the same manner as if they had not been incorporated, and that the creditors possess the rights, and are entitled to the remedies which are furnished by established law against any ordinary copartnership or any individuals. In the opinion of the Court such consequences cannot result from the liability enforced by this statute.

When a statute confers a right or subjects any one to a new liability without providing a distinct remedy, in such case the common law will afford the means by which the party can obtain the benefit to which he is entitled by the statute. But when a statute which confers the right also declares what course shall be adopted to enforce it, the

party is restricted to the remedy so provided and cannot resort to the ordinary remedies provided by the common law or by general legislation.

It is quite clear from all the authorities that under the provisions of the statute invoked in this case, the petitioner was restricted in her method of redress. The persons or property of the stockholders might be taken upon a writ of attachment or execution against the company, or resort might be had to a bill in equity, but an action at law could not be maintained to recover from the stockholders the amount of the judgment against the company. Those provisions of the Rhode Island Statute were taken literally from an act previously in force in Massachusetts, and they have received judicial constructions from the Supreme Court of each of the States. Knowlton *v.* Ackley, 8 Cush., 97; Moiies *v.* Sprague, 9 R. I., 557—and it is sufficient to remark that it was decided by each of these learned tribunals that the remedies given by the statute are exclusive, and that an action at law cannot be maintained against a stockholder in a manufacturing corporation on account of a liability incurred by him solely under the provisions of this statute.

At common law the stockholders of a corporation, unless it was otherwise provided by law, would have been exonerated from liability on all contracts of the corporation, as "the common law recognizes only the creature of the charter, the body corporate, and not its individual members." By its incorporation the Atlantic De Laine Company became a body politic, created by law, and as a legal being to be regarded entirely distinct from all members composing it.

It is claimed that the stockholders made themselves at once liable as copartners until they released themselves by the performance of those acts which, by the provisions of the manufacturing acts, they were required to do before they could escape from their individual liability.

The relation of debtor and creditor did not exist between the stockholders and the creditors of the corporation; the corporation was the sole debtor, capable of making its own contracts, and the only one directly liable upon them, and

the only party against whom an action at law could be sustained upon its obligations. Superadded to this was also the collateral liability of its stockholders contingent under circumstances of a special restricted nature and extent, and to be enforced only in a special limited manner.

There being at common law no liability of its stockholders for the debts of the corporation, we must resort to the charter or other positive provisions of law to ascertain the liability to which its stockholders may be subjected, and as remarked by Shaw, C. J., "such liability depends solely upon provisions of positive law, is to be construed strictly and not extended beyond the limits to which it is plainly carried by the provisions of the statute," 9 Cush., 199.

In the present instance we there find the liability to be "a joint and several liability," to be enforced in a certain definite prescribed method, and only by that method. In no portion of the statute is the liability arising from a partnership anywhere suggested as attaching to the stockholders under the circumstances of the present case. Such a liability, with the resulting consequences, is of a much more stringent character than the words found in the statute would imply; and the Court is not by any judicial construction or legislation to interpolate it. On the contrary, on the sanction of the high authority of C. J. Shaw, it is the duty of the Court to allow to the creditor the rights and remedies clearly enforced upon him by the law, but not to extend them beyond the plain, ordinary signification of the language of the statutes.

A large number of decisions of the Courts of various States have been cited by the learned counsel for the petitioner, in relation to the liability of stockholders for debts of the corporation. An examination of nearly all of them discloses that the actions were brought either to enforce the remedy specifically provided by the local law against such stockholders, or where no such remedy was expressly provided by the local law, to sustain an action at common law against them in favor of a creditor of the corporation, the stockholders in a large proportion of the cases

having been made liable, under all circumstances, for the debts of the corporation.

In many of these cases the Courts do speak of the liability of the stockholders in such case as being "like that of partners," but I am not aware of any in which they are declared by reason of such liability to have thereby become partners with all the consequences of that relation attending such liability. In none of these cases can I discover that there was any attempt to extend the liability beyond that expressly declared by the law, or where a remedy was specially provided, to allow the party to have recourse to any other, and there is nothing found in any of these decisions in conflict with the views herein expressed by the Court which recognize to its full extent "the joint and several liability," under the Statutes of Rhode Island, of the respondents, and the right of the creditors of the company to the remedies provided by law. The Court cannot enlarge the liability or substitute another remedy for the ones expressly provided by statute.

It cannot, therefore, be conceded that by reason of this joint and several liability the stockholders became copartners, so that an act of bankruptcy by one of them in respect to their joint affairs would subject all the members as partners to a liability to be adjudicated bankrupt as a firm. But if it were admitted that, as between themselves, the stockholders, by reason of this joint and several liability, were copartners, yet, in the view of the Court, the admission would not afford much aid to the petitioners in support of this petition against them.

The stockholders must not only be shown to have been copartners *inter sese*, but also copartners with the company. The material acts of bankruptcy set forth and relied on in this petition are the acts of the corporation in the management and conduct of its business, in alleged violation of the Bankrupt Act, and thereby committing acts of bankruptcy. It is very clear if two persons are jointly and severally liable for a debt, and are not copartners, and one of them does an act which would subject him to a decree of bankruptcy, the other is in no way affected by such act of his associate. The relation of

partners must exist between them, and one of the members of the partnership, in that capacity, and not as an individual, must commit an act of bankruptcy in order to subject his copartner to the provisions of the act relating to involuntary bankruptcy.

It is quite clear that the relation of copartners did not exist between the company and its stockholders by reason of their statutory liability. In Moss *v.* McCullough, 5 Hill, 135, cited in the brief of the petitioner's counsel, Cowen, *J.*, says: "But to say that the stockholders and the corporation are members of the same firm would be to violate all analogy. They are not jointly liable, nor does their relation in any respect resemble that of partners, unless it be in the power of the corporation to bind others; this, however, is to bind others in a distinct obligation, nor can the latter bind the corporation."

The Atlantic De Laine Company, by its violation of the Bankrupt Act, has committed various acts of bankruptcy, and it having been so adjudged on another petition, the petitioner in the present case has discontinued the petition as against the company; but as the company and its stockholders were not copartners, the latter are not, by reason of such acts of the corporation, made liable to be adjudged bankrupts.

It is charged in the petition that three of the respondents, Hoyt, Greene and Knight, did cause the property of the company to be attached on legal process on their own behalf. It is sufficient to observe, that by so doing they have not violated any provision of the Bankrupt Act, so as thereby to have themselves committed any act of bankruptcy; and the same remark applies to the amendment, filed April 21, 1874, charging the defendants with committing an act of bankruptcy by allowing the company to be adjudged bankrupt.

The averments against Josiah Chapin are, that he did procure and suffer his property to be taken on legal process by the attachment thereof on debts due by the Atlantic De Laine Company. This would constitute a valid charge against him on a petition that he should be adjudged a bankrupt individually. But as the petition now stands,

he purpose and object is to obtain an adjudication against he respondents jointly, and the others can in no way be affected by any such violation of the bankrupt law by one of the defendants. They are strangers to his proceeding, and so long as the petitioner claims and insists on a joint liability, she should be bound by her claim, and not be at liberty on such joint petition to rely upon the independent liability of one of the respondents in order that she may prevail as to him if she should fail in establishing a joint liability of all the parties.

The Court is also of the opinion that the petitioner is not shown to be such a creditor of the defendants as will authorize her to sustain her petition against them. Her claim is not provable in bankruptcy against them, and therefore cannot be a basis for involuntary proceedings in her behalf; it is not their debt within the meaning of the act.

This precise question was fully discussed by the Supreme Court of Massachusetts, in Kelton *v.* Phillips, 3 Metcalf, 62, and in Bangs *v.* Lincoln, 10 Gray, 600, in which cases it was decided that a claim of this nature was not provable in insolvency. The provisions of the Massachusetts Insolvent Law upon this point are almost identical with those found in the Bankrupt Act, and the Court entertains no doubt that the same construction should be given to the Bankrupt Act.

If the proof of petitioner's debt should not be allowed by the register, and she should, upon appeal, be compelled to resort to an action at law to enforce her claim against the assignee, she would, in the opinion of the Court, meet with insuperable difficulties in sustaining it, as under the decisions in Massachusetts and Rhode Island, the stockholder is not subjected by the statute to liability to such an action.

The liability which the officers incur by a failure or neglect to perform their duties is most clearly in the nature of a penalty, and the remedy prescribed against them is an action on the case or a bill in equity. If the Court is correct in the conclusion that the stockholders are not subject to a decree of bankruptcy on this petition, it is.

quite manifest that the same result must follow as t
the officers.

The decree of the District Court dismissing the petitio
in bankruptcy is affirmed, and this petition for review an
revision of that decree is dismissed.

JAMES H. PARSONS,
T. A. JENCKES,
For Petitioner.

CHARLES THEO. RUSSELL,
For Knight & Greene.

CHARLES HART,
For Chapins.

[L 4834]

MAP OF THE CHICAGO AND NORTHWESTERN RAILWAY

AND ITS

PROPRIETARY RAILROADS

May 31st 1875.

CHICAGO & NORTHWESTERN RAILWAY,

Consolidated Road and Branches,	1,058.00	miles.
Chicago and Milwaukee Line,	85.00	"
Iowa Leased Roads, (perpetual lease,)	356.60	"
Total Chicago and Northwestern Railway,	1,499,60	"

PROPRIETARY LINES.

Winona and St. Peter R. R.	327.00	miles.
Mankato Branch,	3.75	"
La Crosse, Trempeleau, and Prescott R. R.	29.00	"
Northwestern Union Railway,	62.63	"
Iowa Midland Railway,	68.80	"
Total, Proprietary Roads,	491.18	"
Total miles of railroad,	1,990.78	"

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